



**Boise City Planning & Zoning Commission  
Hearing Minutes  
September 16, 2019**

I. CALL TO ORDER

PRESENT: Ansotegui, Stevens, Gillespie, Stead, Finrock, Bratnober,  
Schafer, Zuckerman

ABSENT:

II. MINUTES ACCEPTANCE

1. Planning and Zoning Commission Minutes – August 5, 2019
2. Planning and Zoning Commission Minutes – August 12, 2019

III. CREATION OF CONSENT AGENDA

1. **CVA19-00032 / Peter Oberlindacher**

CVA19-00032 / 1217 N 20th St / Variance to encroach into the street side and rear setbacks for the construction of a new garage on 0.18 acres located in a R-1CH (Single Family Residential with Historic District Overlay) zone. Nicolette Womack

<b>RESULT:</b>	<b>APPROVED [7 TO 0]</b>
<b>MOVER:</b>	Meredith Stead, Commissioner
<b>SECONDER:</b>	Jim Bratnober, Commissioner
<b>AYES:</b>	Ansotegui, Stevens, Gillespie, Stead, Finrock, Bratnober, Schafer
<b>ABSTAIN:</b>	Ben Zuckerman

2. **CUP19-00046 / Acorn Meridian LLC**

CUP19-00046 / 665 N Mitchell St / Conditional use permit to construct an approximately 12,000 square foot medical office building on 3.23 acres located in a M-1D (Light Industrial with Design Review) zone. Karla Nelson

<b>RESULT:</b>	<b>APPROVED [7 TO 0]</b>
<b>MOVER:</b>	Meredith Stead, Commissioner
<b>SECONDER:</b>	Jim Bratnober, Commissioner
<b>AYES:</b>	Ansotegui, Stevens, Gillespie, Stead, Finfrock, Bratnober, Schafer
<b>ABSTAIN:</b>	Ben Zuckerman

3. **CUP19-00051 / Houston-Bugatsch Architects**

CUP19-00051 / 1666 S Entertainment Ave / Conditional use permit for a drive-up window associated with a restaurant on 1.21 acres located in a C-2D (General Commercial with Design Review) zone. Karla Nelson

<b>RESULT:</b>	<b>APPROVED [7 TO 0]</b>
<b>MOVER:</b>	Meredith Stead, Commissioner
<b>SECONDER:</b>	Jim Bratnober, Commissioner
<b>AYES:</b>	Ansotegui, Stevens, Gillespie, Stead, Finfrock, Bratnober, Schafer
<b>ABSTAIN:</b>	Ben Zuckerman

4. **CUP19-00049 / Brandt Hospitality Group, Inc.**

CUP19-00049 / 7881 W Emerald St / Conditional use permit to exceed the maximum height by approximately 11 feet for proposed hotel with 106 bedrooms on 2.36 acres located in a C-2D (General Commercial with Design Review) zone. Stephanie Leonard

<b>RESULT:</b>	<b>APPROVED [7 TO 0]</b>
<b>MOVER:</b>	Meredith Stead, Commissioner
<b>SECONDER:</b>	Jim Bratnober, Commissioner
<b>AYES:</b>	Ansotegui, Stevens, Gillespie, Stead, Finfrock, Bratnober, Schafer
<b>ABSTAIN:</b>	Ben Zuckerman

#### IV. NEW BUSINESS

1. **CFH19-00055 / Aeries Terraces LLC**

CFH19-00055 / 2317 W Winter Camp Dr / Hillside development permit for the grading associated with a proposed residential subdivision on approximately 22 acres located in an R-1A (Single Family Residential) zone. Cody Riddle

**Madam Chair Stevens:** And with that we'll go ahead and move onto Item #5. This is CFH19-00055 and SUB19-00034. The applicant is Eyrie Terraces and we'll hear from Mr. Riddle.

**Cody Riddle:** Thank you, Madam Chair, members of the commission. Before I get into my presentation, I'd like to just touch very briefly on a procedural item I mentioned in the work session real quick. As you know, we have a deadline of 5 PM on Thursday preceding hearings for written

testimony. As is the case with essentially every hearing, you receive information after that deadline. We then bundle it on Friday and typically send it to you that afternoon in a packet. We also upload it at that time and make it available to the public.

The hearing this evening is no different. You should've received a packet Friday afternoon, like you always do. That packet was uploaded to our website as well Friday and made available to the public. You might have noticed, however, that the applicant's letter, applicant's counsel letter was dated that Friday. And that did raise some concern with some of the neighbors.

I want to be clear for the record that the timing of that letter was my fault and because of my actions. The applicant's counsel called me actually Wednesday evening and requested a meeting Thursday to walk through their objections to the staff report and submit the letter. I was unable to meet until first thing Friday morning, so we met Friday morning, walked through their concerns, and then I accepted the letter.

I accepted the letter for two reasons. First, because it was my fault simply that it was late, and second, and probably most critical, because it would be available to you and the public at the same time it always is.

In short, I tried to provide due process for everyone involved and believe we've done so. So with that on the record, if you're comfortable I'd like to proceed into the hearing itself.

**Madam Chair Stevens:** Any objection from the commission? Okay, I'm not hearing any, so please proceed. Thank you.

**Cody Riddle:** Okay. So Madam Chair, the item before you this evening is a Hillside Development permit and a preliminary plat for a 30-lot residential subdivision. The property is located east of Hillside Junior High and Quail Hollow Golf Course.

The project consumes about 21 acres of a nearly 64 acre parcel. Access is proposed from an extension of Winter Camp Drive through a common lot in an adjacent subdivision. Obviously, there's a lot of interest in this project, but before we get started, I do want to acknowledge something that we can't lose sight of. And it wasn't lost on us in evaluating this proposal.

This is private property that has zoning, that does allow up to two units per acre. It's not public open space and does include trails we're probably going to hear about tonight. We did, obviously, though recommend denial of the project. In our recommendation, I want to be clear, we're not saying that this property can't or shouldn't be developed. We're recommending that it not be done is proposed.

The purpose of the Hillside Development Ordinance is to ensure consistency with the comprehensive plan, and also to ensure protection from hazards due to slope, earth movement, other hazards including fire. As detailed in our report, we believe the application should fall short in this regard.

As you can see here, most of the site is designated slope protection on the land use map of Blueprint Boise. It's also encumbered by slopes that exceed 25 percent. So 25 percent, and there's the presence of expansive soils on a very small portion of the site. The code is clear these areas are not to be developed, unless the project engineer demonstrates that these conditions can be mitigated.

In our minds, the preliminary materials included did not provide this assurance. For example, the soil study analyzed conditions to a depth of 18 feet, and the project includes cut and fill exceeding 80 feet in certain locations. I think it should be clear, in my report I probably discussed things a little bit too general as it relates to technical information. It's standard for applicants to do preliminary studies like this.

And then if approved, it's also typical that they follow up with detailed studies. While we're firm in our recommendation, the way I refer to some of the technical deficiencies is probably a bit unfair. The applicant's engineers and our own engineers are here this evening to speak to that a little bit further.

In addition to the technical concerns, the design does very little to preserve natural characteristics of the site. It's a conventional layout with significantly more disturbance than is necessary. They're moving a significant amount of soil to accommodate only 30 buildable lots, and access to the required – access to the site requires an 18-foot tall retaining wall at the entrance.

The layout includes three dead-end roadways. And the topography is so severe that most of the streets are single loaded with padded lots only on one side. That was an attempt to meet Fire Department requirements – or as an attempt to meet Fire Department requirements, they're also providing a divided roadway design throughout much of the project. Not only does this fail to meet fire department requirements, residents of these parcels would actually be forced to travel out a direction and make a U-turn to leave the site.

This would be obviously especially problematic in emergencies. And I would note that the fire department did recommend denial of the application. They have a representative here this evening as well.

Development of the site is further challenged by the fact that the property currently has no legal access. The applicant is proposing to extend Winter

Camp Drive through an adjacent property. That's problematic in several ways. The grading required to accommodate the design is significant. There's approximately 50 feet of cut required simply to access the proposed lots in location you see here.

Finally, development, including any roadwork, is prohibited on that adjacent parcel. It was included in a larger project originally approved in 2008 and identified as unbuildable at that time. That 2008 approval was subsequently modified in 2013 when the condition was reiterated. It was clear that that lot was not to be developed, including roads without modifying that plan development.

Now the applicant, I believe, might argue that it was never intended to include that lot in previous projects. And that might be the case. But there have been opportunities to address this in the past.

So to summarize, our concerns are really in three areas, lack of access, fire and life safety. And then as I pointed out, some deficiencies in the technical data to demonstrate, we should be building on those slopes. I will acknowledge that if it was just for the technical data, you could consider a condition approval as is often the case in this type of Hillside development.

It's quite possible the site could support the project from that perspective. However, the other two areas are certainly harder to overcome. And so, because of that, we are recommending denial of both the Hillside permit and subdivision tonight.

With any denial, you are required to include ways if you choose to deny that the applicant might obtain approval, some might disagree. But as I mentioned before, we're not suggesting the site can't be developed. We believe a project clustered closer to the existing access may be more appropriate. That could require a reduction in density, in lot sizes, or maybe both.

Procedurally, any new application in our mind should include a request to modify the existing conditional use permit. That wraps up my comments. I believe it's good to hear from the applicant now. Again, I would note that we have representatives from both Public Works and Fire here this evening. Thank you.

**Madam Chair Stevens:** Great. Thank you, Cody. Is the applicant present? Okay. Can you step forward? Is 20 minutes enough to start with? Okay. Oh, we've got our monitor up. So, are we good on timing then? Okay. Fantastic. So, we'll put 20 minutes up and start with that.

**Deborah Deborah Nelson (Applicant Representative):** Good evening, members of the Commission. My name is Deborah Nelson. My address is 601 West Bannock Street and I'm here tonight on behalf of the applicant Eyrie Terraces. Tonight, we're also expecting our project engineer KM Engineering and Geotechnical Engineer, Allwest Testing and Engineering who may be available to answer any additional technical questions you have.

Given the broad range of comments that you've received from the neighbors, I'd like to start with a discussion of the narrow scope of the applications at issue. There are just two applications, Hillside and subdivision. Both are non-discretionary technical applications.

The City's discretionary entitlement decisions were made in 1981. When the city decided to annex this property and zone it R-1A allowing two homes per acre. Annexation is when the City decides whether the City can provide municipal services to a property; sewer, water, fire, police, schools. Zoning is when the city decides what use is appropriate on the property and at what density.

To make those decisions, the City looks to the comprehensive plan. Those decisions have already been made. The applicant here is not seeking any rezone, conditional use, or planned unit development. The applicant simply seeks to develop in accordance with the allowed uses, the allowed density, and the allowed dimensions for the applicable zone all as set forth in your code.

The comprehensive plan does not apply to a Hillside or a subdivision application. The inquiry about what uses are consistent with the plan was completed when the property was zoned. Compatibility with existing uses is also not an applicable criteria since residential is already an allowed use within this zoning, and we are not seeking any change in use.

For the same reason, the visual impact of these allowed homes cannot be a basis to deny these applications. And of course, the public's current use of trails on this private property by permission of the landowner cannot be a basis to deny any development. With that general context, I wanted to talk about a few specific comments on these applications starting with transportation and access.

ACHD has approved the project. We are in agreement with all ACHD conditions of approval. Originally, the boulevard entrance was proposed to provide a wider area and additional lane of travel for emergency vehicles. But given the agency's responses, we will remove that Boulevard consistent with the design recommended by ACHD and required in their conditions. We will also add the sidewalk along Tollymore that they

wanted and the bulb-out at Tollymore and Sansa Court to the extent that Boise Fire is agreeable.

Access is provided by connection to West Winter Camp, a public street owned by ACHD. The access is through Lot 19 on the adjacent development, Eyrie Canyon Number 5. That lot was designated on the Eyrie Canyon plat as unbuildable in 2008, which means that no homes or buildings can be cited there. Nothing that requires a building permit. This plat note is not an issue here because this project does not propose any buildings there and does not require any building permit on that lot. This lot is not actually even a common lot. Nor is it open space. It's not public, except for a trail connection provided through it.

In a 2013 CUP modification for Eyrie Canyon involving a time extension and a minor road alignment. Neighbors asked the city to add a condition related to this Lot 19 that no roads could be built on this lot so that the property to the west, the property at issue for this project tonight, would not have access.

In response, the City added a condition to require that road connection through that lot would require a publicly noticed approval. This condition is unenforceable. The City cannot legally restrict a property from accessing a public street. ACHD has exclusive authority over all public streets in Ada County with the power to extend, create, and control access.

The City does not have the power to limit ACHD's extension of those public streets. And the condition is improper because it was added for the sole purpose of limiting public access to another landowner's property outside of the development at issue in the CUP modification. Conditions have to mitigate the impacts of the application at issue.

In any event, even if the condition weren't illegal, the terms are complied with tonight. So, a CUP modification is not required. The condition on its face calls for a publicly noticed approval. That road is at issue in this publicly noticed hearing.

This property does not currently have another access. It has a platted easement through the golf course. But this access has practical problems, including steep grade that would exceed the 10 percent required by fire. And the easement does not appear to accommodate a public road.

The landowner has met with the city before to discuss options for an alternative access, including a land exchange to allow a less steep road entrance in exchange for open space and trails to be dedicated to city parks along with a new trailhead. To date, none of that has been successful. So, the landowner is proceeding with the available option to access a public street. The property has a legal right to access that public

street to support its existing zoning designation. The City cannot now deny that without compensation for takings.

Turning to Hillside, the Foothills' Planned Development Standards in Boise City Code 110709 do not apply to this project because those standards only apply to annexations and rezones. The submitted engineering reports address the applicable technical standards.

As acknowledged by Public Works, these reports at this stage are preliminary and additional information is not required until the final reports. Public works reviewed the applicant's preliminary reports and concluded that, as proposed, the development does not create a potential hazard of flooding, soil instability, or erosion if the recommendations of the design engineer reports and the International Building Code standards are adhered to.

In response to this memo submitted by the – that was submitted by the project engineer on September 9th, the applicant agreed to all of the conditions of approval proposed by Public Works, except to simply strike the inapplicable references to the Foothills' Plan Development Standards, which the City agrees, do not apply to this project.

We appreciate some of the clarifications that were made by Cody tonight in talking about the difference between preliminary and final reports, and some of the differences between conclusions that were reached by Public Works and planning staff. I want to address just a few of those in more detail.

First, turning to grading quantities. We feel like some of the statements that were in the City reports were misleading about the grading quantities. This project will balance and will move approximately 510,000 cubic yards of material. The City incorrectly stated in the text of their reports that we will move over 1 million cubic yards by counting the same material twice, the cut and the fill.

In the table where the city compares this project to other projects – and it's important to understand that the City only listed fill numbers for the other projects. For example, Harris North's total number for both cut and fill would be 2.3 million, not the 1.2 listed in the table as shown on their submitted grading plans. Also, the tables per lot comparison is misleading. That's in the far right of the Appendix A table. Because these lots are widely different sizes for each of these developments, many of them that are listed here as project comparisons are less than half of the size of the 20,000 square foot lots in this project.

Another comment that we have about the planning team's comments about expansive soils and the depth of test pits. We don't feel that these were supported by the preliminary Geotech report or Public Works memo.

Public Works did not raise any concerns with expansive soils. Based on the Geotech report, these are only found in the top two feet in two out of 15 test pits, which is minimal and will be graded off. Not used for the compaction of building lots.

Public Works also did not raise any concern with the depth of test pits. Additional depth will be performed with the final reports per standard protocol. Finally, there's several statements in the project report that rely on provisions in the comprehensive plan that merely repeat the inapplicable Foothills plan development standards.

As the City has recognized these standards, do not apply to this project. And compliance with the comprehensive plan is not a specified criteria. And so, it's not properly considered for either of these applications.

Turning to fire. Boise fire has recommended denial because the development has a single point of access. And because they say the project has dead end roads over 750 feet long. We disagree with Fire's recommendation for three important reasons.

First, the project does not require a second access point based on the fire code. The fire code allows up to 30 homes off of a single access point. In fact, the fire code allows more than 30 homes that were equipped with sprinklers, which we will have. So, a second access point is not required for this size of development. Outside of these 30 homes, the area is well served by four access points, two public streets and two emergency accesses serve this general area.

Second, the project does not have dead end roads without turnarounds. The Boise City code defines dead end street as a street connecting to another street at one end only and not having provision of vehicular turnaround at its terminus.

Consistent with this definition, the fire code standards regarding road length are all about when turnarounds are needed, and what type of turnarounds are needed to ensure fire truck mobility. These standards are aimed at single roadways without midpoint intersections and turnarounds.

This project provides fire truck mobility. It includes 96-foot diameter cul de sacs at the end of each road and two midpoint T-intersections that allow turnarounds. Consistent with the Boise City code and the Fire code, we do not have any dead-end streets because we have no streets that end without turnaround mobility. And the size of this development does not require a second access point.

Third, Boise Fire is applying these fire standards differently to this project than to other similar projects in the Foothills, this treatment is arbitrary and

violates the applicants' equal protection rights. First example is in Win Hollow, a nine lot residential infill project which included a rezone application.

The project extended a single access road from 1300 feet to 1600 feet. No emergency access, 37 homes served in full on the street for approximately 0.7 miles to the fire station. Up to 50 percent slopes in this area as well, no condition was imposed by Boise Fire Department for sprinklers or any other mitigation.

Another example, Harris North, 29 homes, very similar size to ours. Served off a single access 1579 feet long, also has slopes up to 50 percent, 2.1 miles to the station comparable to our approximately two miles. Fire required only the last nine lots to have sprinklers as the only mitigation for allowing this.

Another example, Hackberry Ranch has 24 homes off of a single access 1585 feet long. Also has 50 percent slopes in that area. No emergency access. 1.5 miles to the fire station. Boise Fire Department required sprinklers on all homes that were along the single access road. There are other single access roads in Hackberry on the east side that are approximately 1900 feet, including Thornberry Court.

Boise Fire Department has never said that over 750 feet is a problem, even in the Foothills. Boise Fire Department has only required sprinklers as mitigation in some of these locations. We have offered to install residential sprinklers in all 30 of our homes. This development is not creating a fire risk. Houses with irrigation and landscaping are inherently safer than undeveloped arid land.

Turning to open space. Contrary to many of the statements in the neighbors' comment letters, this property is not open space. It is not public land. It is private land with residential zoning. This land owner, like many other private landowners in the Foothills, has generously allowed the public to enter their property for recreation.

That permission may be withdrawn at any time and certainly cannot be the basis for denying their lawful use of their own property. The existing trail from Eyrie Canyon Number Five, the adjacent development that is partially located on our project property now will continue outside the footprint, as is shown in this map coming down in the kind of purple looking line down through the middle.

We will also add a new trail between our sidewalk at the lower extension of the cul de sac. And it will connect to the trail on the Eyrie Canyon property that will create some new connectivity with our sidewalks as well. And with approval of these applications, the landowner will continue to grant the same temporary access to the property to use the existing trails

outside of the plat footprint just as they do now, until such time as that land may be developed if it ever is.

Visuals. As I mentioned already, visual impacts are not legally applicable to these applications. But to address the neighbors' comments, the applicant hired Chuck B. Edwards, a landscape architect that specializes in 3D visualizations to show the project build out from various viewpoints at six feet from the ground. This initial map which will repeat on each slide next to the image shows that the pictures were taken from all sides of the project.

First on 36 Street, and maybe – could you put the cursor on the location of the map? From the dog bone location? Very difficult to see the project. But you can see it just at the top of the hill there. Second, Hillside Park, you can't get an image here. I had to go 60 feet in the air to be able to try to see anything. But from the ground there – and this was the clearest location.

Third, Catalpa and Hill, also cannot see the project. Fourth, Forsythia – cannot see. From fifth, top of 20 – excuse me, the fifth image top of 28th Street, we cannot see. And top of 28th Street is really at the top of some of the developed residential neighborhood that's just below the Hillside to Hollow Trail area that's below our project.

And part of why you can't see this is there's this ridge line that is in front of the developed area and it sits down behind that. So, unless you are from an angle that is behind that ridge, it is very difficult, if not impossible to see as evidenced from this.

Six, top of Boise Hollow. Now we're up on top of the ridge. The top of the Hillside to Hollow area, the lower or just at the southern edge of our property, looking down. And now you can see the development nestled there behind that ridge and in front of the golf course.

Number seven, at our entrance. And Cody showed you a picture in his initial testimony about what that – that there is an existing hill there. This is what it looks like when it's developed. You can see the project but in this capacity.

This property is located low in the central Foothills in line with other residentially zoned and developed properties in the Foothills. Residential developments of Eyrie Canyon and Arrowhead Canyon are to the north and to the east. Other zone property surrounds this property.

Many of the opponents to this project live in the Foothills, including immediately adjacent, as is evident from this map highlighting addresses of opponents. Some of them are right next door in Eyrie Canyon and Arrowhead Canyon. Other residential neighborhoods extend across the

Foothills, including Hackberry and Highlands off of Bogus Basin Road, Somerset, and Boise Heights, the East Foothills, Table Rock, Warm Springs Mesa, and Harris North.

Many opponents said that they recently moved here and chose the Foothills because it's adjacent to open space. Among these residential developments that are in private land throughout the lower Foothills, there are also open space reserves on public land, which do provide value to all city residents. The future homeowners in this project undoubtedly will choose to locate here for many of the same reasons as the opponents have.

We ask for your approval. We accept the conditions of approval in the Public Works report, except the incorrect references to the Foothills plan development standards. We accept all conditions of approval in ACHD's report. We think you have a basis to approve this, and we ask for you to do so. I stand for questions.

**Madam Chair Stevens:** Thank you, Ms. Nelson. We are actually going to hear from the neighborhood association first before we do questions, and then we're going to go ahead and move to questions. So, if the Central Foothills Neighborhood Association would step forward, Mr. Brewer? It looks like you're the guy since you're marching up. So, we gave the applicant 20 minutes. And so, we'll give you 20 minutes as well. And then we'll move to questions.

**Neighborhood Association:**

**Tim Breuer (Central Foothills Neighborhood Association):** Good evening, Madam Chairman, commissioners. Is this working? Sorry. My name is Tim Brewer. I reside at 3824 North 33rd Street in Boise.

First, thank you for your service. I know it's a big commitment of time, and it's appreciated. I'm here tonight to testify on behalf of the Central Foothills Neighborhood Association. But I will also say that our colleagues from Collister, Sunset, Veterans Park, Highlands and North End Neighborhood Associations all have considered the proposal. They are aligned in our request for denial. This project has far reaching implications for our community. I got to figure out how to work this. Here we go. Okay.

**Madam Chair Stevens:** And by the way, you don't have to be right on top of the microphone. You can stand a little back and I think that would be okay. Yup. If that's a little easier for you.

**Tim Breuer (Central Foothills Neighborhood Association):** Thank you. I want to point out the Central Foothills Neighborhood Association has worked with the City and developers in the past. We support projects that follow the rules and add value to our community. Eyrie Terraces does neither of

those. But before I get into our testimony, I'd like to first touch on the late letter.

And I know Cody, the staff, noble as it is took responsibility. But frankly, deadlines are deadlines. We all got our comments in on time, and we would like to request that that letter be struck from the record.

The testimony that I will provide is going to be in two parts. One will focus on the open space lot. Number 19 of Eyrie Canyon is established as a condition of approval of the Eyrie Canyon CUP. The second will be on the second completely unrelated track. I'll call it the subject parcel that contains the 30 proposed lots.

Let's take a quick look at the lay of the land. I like having that screen there. Thank you. It's important – and some of the maps have illustrated this, but the property is bordered on the south by Hillside to Hollow reserve. And on the north, by the golf course on the northwest by the Boise school property.

Lot 19 is hand drawn in in red, the larger 63 acres in dark blue, and the project site kind of a subset of that. I think it's important to note that the Lot 19 open space lot listed as unbuildable was actually included in the Eyrie Canyon development. It was zoned as one unit per acre at the time. Those 13 lots were used in coming up with the total. They were shifted and put elsewhere.

The lots were reduced in size. And that's all fine. The ability or the benefit of getting that advantageous zoning, the applicant then was provided to set aside community values like open space and trails and pools, and that sort of thing. So in the public record, the discussion in 2008, a lot of that was in our written testimony, and you can read it. But there was a lot of discussion about open space as part of Eyrie Canyon.

And some of it related around the open spaces being proposed by that project was really left overland steep unusable, had little conservation or recreation value. Planning and Zoning at that time recognized this situation and acknowledged the neighbors were willing to compromise and that the – to try and establish some open space. Commissioner Barker was on top of it and said, "Really, there's not a lot of useful open space in the project."

The comment in the public record that I think is most pertinent and really illustrates the true intent of the condition was that the interest in the commission at the time was to have that lot be set aside as open space. Those words were used time and time again by numerous, in fact, almost every Commissioner at that time. This one is the most salient comment.

The chair at that time, in responding to the desire by Ms. Barker that they needed to put it as a condition that it would be clearly as open space, that labeling it as unbuildable would do that. And I think this is pretty clear of the intent. I know the developer's council I think said, "The sole purpose was to limit access to the lot next door." Never was the adjoining or the adjacent lot brought up in any of these discussions. They are two separate completely unrelated parcels.

The next thing I want to point out is that use of the term unbuildable. It's easy to see why the commission at the time would have thought or assumed that unbuildable was going to take care of it, that putting that on the plat would solve it. In another instance, they were talking about six slots being removed. And that particular area being unplatted as common area. So, the term started to get used interchangeably.

The Commission also were really wanting to make sure they got this thing nailed down tight. And they said, "How do we know that in the future someone's not going to come back and challenge us, essentially?" And the staff really said, "Neighbors don't have short memories. They could expect a lot of people to show up." Well, here we are full house. That was a good prediction.

But again, I think the intent there, when you read through the public record, the intent was that that lot be set aside as open space forever. And this was the condition that was put in 2008. I'm going through a lot of this in detail. You might already be up to speed on it. But I think it's good to refresh our memories.

The applicant also has suggested that perhaps there was – they're challenging the establishment of the conditional use permit. And this is out of a case Lusk versus City of Boise where it kind of reminds the P&Z, Planning and Zoning commissioners, that conditions can be attached. And they can go beyond the standards generally required in an ordinance.

So, the project got the condition placed. But they were still concerned that through platting, it would – something would happen to it. So, they got a hold of the city planning director who reassured them that there's no way that something could come in and change that lot. The condition of approval stands as it is.

The CUP was amended in 2013 as referenced. That was not the start of the condition. It was actually strengthened in our minds. This was a quote out of the discussion and staff report. It again illustrates that this was to be left alone. And that was the intent of the Commission in 2008.

The plat, as it is here, illustrates a common lot in red. That was to provide trail access. Since then it was determined that didn't work so well. The trail

now is essentially where the road is proposed to go. That trail would be obliterated. I was pleased to see at least some effort to illustrate some kind of trail idea. Up until this evening we had not gotten any of that information.

The neighbors were frequently led to believe as they researched the purchase of their lots that the lot would always be left alone, which is too steep to develop. One in particular, a neighbor wanted to hear from both the developer and the City on this point. The City told them, "This was unbuildable, and set aside as open space."

These elements are really key in making decisions to expend a lot of money and invest in a home site. In addition added to this, the owner's representative requested of the assessor to reduce the value for tax purposes to have less of a property tax value. And the assessor did that. So, when you go through what's out there and available to the public, you will see all of this information including a note on the plat that says unbuildable.

So, why do we want to rehash all this history? Well, the open space that was set aside, the intent of the Planning and Zoning Commission was not to have any building or road within it to suggest that somehow, we now use open space to access adjoining property for development sets an extremely awful precedent in our community. Where will that stop?

The subject parcel really needs to stand on its own. It needs to find its own access, not through a platted open space lot in our minds. We believe that we are here just as staff suggested that it should be left as open space. No homes, no streets, no driveways just left as is with trail access, just as the condition of approval states, just as Planning Commission intended in '08. Just as Planning Commission affirmed in 2013. We urge you to enforce the condition of approval by denying the application.

Now, I'm going to head into Eyrice Terrace as the subject parcel, if you will. To be frank, we were surprised the application was accepted given the unbuildable open space slot. You cannot get there from here, essentially. There's a plat note and a condition. And we believe that that is very valid. The lay of the land just kind of from an oblique perspective, you can see that the open space lot next to the project area, you would have to impact that open space lot.

I'm not going to go into too much depth on the grading. I think that's being covered pretty heavily. But you can see essentially, there is no pointer, is there? Anyway, the street alignments run counter to the lay of the land. And that's very much a terraced area.

**Madam Chair Stevens:** Tim, you could use the mouse if you wanted to point. Yeah, there you go.

**Tim Breuer (Central Foothills Neighborhood Association):** Oh, okay. Yeah. Sure.

**Madam Chair Stevens:** Oh, I think it's coming up on all the screens. Yup.

**Tim Breuer (Central Foothills Neighborhood Association):** Okay.

**Madam Chair Stevens:** If you want to start over on that.

**Tim Breuer (Central Foothills Neighborhood Association):** The ridges and gullies run this way. The roads and terracing run this way. It's a very aggressive grading and cut and fill that needs to take place.

This is another slope map. Pink is greater than 25 percent. Kind of the magic number that we need much more scrutiny to develop. This is the layout showing how much of this project is actual land slopes greater than 25 percent.

I know the engineers say, "We can engineer this. Trust us. Don't worry." Eyrie Canyon has had that same promise. And there's been rumors that there's some settling there. Terra Nativa had very good engineering, also having problems. Foothills are a sensitive challenging place to develop.

The blue is the deepest cut of a ridge. The black, the deepest fill. If you want to suggest that taking the top off of prominent ridge by 80 feet, that is equivalent of about a seven-story building. Fill of 70 feet, equivalent of a six-story building.

This is the same diagram you've seen already. Significant cut and fill, these are the metrics. Sure, it's not a million. We'll give them that. Total cut and fill of 500, half a million cubic yards, 1325 dump truck loads of dirt per lot.

The comp plan. I want to really touch on this a bit because comp plan is a meaningful document. A lot has gone in to creating the comprehensive plan. And there's some excellent guidance in the comprehensive plan. Some of the verbiage you hear and see is excellent. It's what our community really wants to be. This scenic backdrop is part of our DNA. That's who we are.

Council said that comp plan shouldn't be used as a criteria for developments. That's in the code. And to a degree, we agree with that. We actually want to look a little bit deeper at this with our Hillside – okay, just continue on. The Hillside –

**Madam Chair Stevens:** You can go backwards. There you go. Or the back arrow I think maybe.

**Tim Breuer (Central Foothills Neighborhood Association):** Okay. This slide got all messed up in transition. But essentially, our development code

really looks back and says, "Use the comprehensive plan as a guide." They talk to each other. They're not static documents. The court cases that are out there also say that the comp plan should serve as a guide and advise governmental agencies.

This is your (inaudible) versus Blaine County. Also pointing out the comprehensive plan should be considered and used in conjunction with the zoning ordinance. These are really important aspects. And we are asking you to use the comprehensive plan as your guide because, essentially, the code is sometimes limited in the details that it offers. How much cut and fill is too much? It doesn't say.

How much steep slope is too – doesn't say. What is the prominent ridge? It doesn't say. What you have to go by is a comprehensive plan that guides you in making your gut decision. That's what we have to work with. And we hope you do so.

We also want to point out that some developments have followed the rules and have been tucked in. The developer in this case wanted to put homes on the ridge. He was not allowed to do so. This shows the trail system. And I do want to acknowledge and concur with the applicant's attorney that we have had the great fortune to enjoy the private property at the good graces of the owner. And we would like to offer that we hope that that continues.

The last thing that I – well, there's more here. But essentially, the development will take a pretty big bite out of the trail system. But as the attorney said, and correctly so, that's not a reason for denial. Popular trails would be lost. Many people and pets would be disappointed.

Fire. This is a huge issue with our residents. And they have experienced firsthand the fear of having to deal with such a fire. This area, by words of a wildland firefighter, is a disaster waiting to happen. In 1987, a fire in the Central Foothills occurred. Crestline Drive got clogged with people either going up to see it or trying to escape from it. The fire truck got stranded. We lost homes and a fire truck. That's a sign of what may come, not may probably will come.

So, I would like to take pause. And I am wondering if our attorney, Matt Parks is here. He's going to speak to some of the legal aspects. And I hope to do a close in a moment.

**Matt Park (N.A. Attorney):** Thank you. Again, my name is Matthew Parks. My address is 802 West Bank Street Suite 110. Sorry.

I'm going to just touch on the legal issues concerning the lack of the applications that I think should have been filed, which should have put the issues properly before the Commission. And that is the plat note

vacation, which wouldn't be heard by this Commission. But there's also the conditional use permit modification.

And in the Boise City code, one of the components of a conditional use permit application, one of the criteria is whether or not the proposed use complies with the comprehensive plan. So, I do think you not only should, but really are required because what they're asking you to do today is to modify the conditional use permit. I would say taking a step back further by not filing that application, if you granted this application, what you've done is violated the due process rights of everyone who lives in that subdivision or everyone or the public because they did not have the opportunity to challenge what would have been a modification of the conditional use permit.

I think it's pretty clear the intent of that plat note is also – it's not just that the lot is unbuildable. The plat note also says that the development of Lot 19 has to comply with the conditional use permit and its subsequent modification. So, without that change, I don't know why the application here could be approved. I would say also, if it does, what you've done is probably created a litigation in between the neighbors who purchased these properties in reliance on the existence of that plat note.

That plat note created a legal right for the people that live in that subdivision. They have the right to rely on that plat note. And, of course, there are ways to have that plat note removed. It can be vacated, or the conditional use permit could be changed. But neither of those things happened.

As for the takings argument, I would say that there's no takings here. I'm going to get through quickly. First, the statute limitations on takings argument is expired. And second, the property owner waived any takings argument by agreeing to the inclusion of the plat note.

So for those reasons, I would say that there's no problem with taking here. And finally, as for the equal protection rights claim, this is not a situation where we've got a protected class. It's a situation where as long as the City has any rational reason for the difference in the treatment of this applicant as to other applicants – and I'm talking specifically about the fire issues.

If you look at the Fire Department's letter, they specifically said that site specific issues were one of the reasons they think this application should be denied. And I think that gives you more than enough to withstand an equal protection challenge. With that, I'll turn it back over to Tim.

**Madam Chair Stevens:** Thank you.

**Tim Breuer (Central Foothills Neighborhood Association):** Thank you, Matt. Madam Chairman, Commissioners. The eyes of the future are upon us tonight. But what kind of interesting, I like this quote. But what's curious about this evening is you all and many in this room, get to be the eyes of the future. You get to look back on what was done in 2008. And ask yourself, did they get it right? We think they did.

You can look back with the eyes of the future. Now, look back on the hard work that went into Blueprint Boise. Did they get it right? We think they did. We would ask, in fact, urge you to deny these applications and honor the decisions of the past. Thank you. I'll stand for questions.

**Madam Chair Stevens:** Thank you. So this is the time that the Commission has to ask questions of staff, the applicant, or the neighborhood, as it may be. So, who would like to start us off?

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** I just have a kind of a point of procedural order. So may I?

**Madam Chair Stevens:** Yes.

**Commissioner Gillespie:** So, at the outset of the Central Foothills Neighborhood Association testimony, the chief made a request that the applicant's letter be struck from the record. And since that's a point of contention, I wondered if we ought to just make a decision about whether we're going to accept that into the record or not before we start asking questions based on it.

**Madam Chair Stevens:** I think that's a smart idea.

**Commissioner Gillespie:** So, I move that we accept the applicant's letter into the record for the reasons that Cody stated.

**Commissioner Stead:** Second.

**Madam Chair Stevens:** Okay. There's a motion by Commissioner Gillespie and second by Commissioner Stead. Do you want to have any discussion about it?

**Commissioner Gillespie:** Madam Chairman?

**Madam Chair Stevens:** Commissioner Gillespie?

**Commissioner Gillespie:** So, Cody stated on the record, and it was un rebutted that the public's access to that letter was not affected by the

timing of its acceptance. As per code, the applicant also submitted an explanation as to why it should be accepted. And so, the applicant did, in my opinion, conform with the code that we use for accepting such submittals.

**Madam Chair Stevens:** Okay. Any further discussions?

**Commissioner Stead:** Madam Chair?

**Madam Chair Stevens:** Commissioner Stead.

**Commissioner Stead:** I agree with Commissioner Gillespie. There was no delay in any of the procedure. So, for the reasons stated, I believe that we should be accepting the letter.

**Madam Chair Stevens:** Okay. Any further discussion?

**Motion (Applicant's Letter Acceptance):**

**Madam Chair Stevens:** Okay. Would the clerk please call a role on this?

**Roll Call**

**Commissioner Schafer:** Aye.

**Commissioner Stead:** Aye.

**Commissioner Bratnober:** Aye.

**Commissioner Ansoategui:** Aye.

**Madam Chair Stevens:** Aye.

**Commissioner Finrock:** Aye.

**Commissioner Gillespie:** Aye.

**All in favor. Motion carried.**

**Madam Chair Stevens:** Okay. With that out of the way, who would like to start the questioning of the staff or the applicant?

**Commissioner Bratnober:** Madam Chair?

**Madam Chair Stevens:** Commissioner Bratnober.

**Commissioner Bratnober:** I have a question either for legal or for staff. One of the things that was noted is the – asserted that the Foothill Development Standards do not apply in this case. Can you tell me why?

**Cody Riddle:** Madam Chair, Commissioner Bratnober, the Foothills Plan Development Ordinance does not apply. It would only apply in the case of an annexation or rezone. However, there's also in that same chapter of code, the Hillside Development Standards that do apply.

**Madam Chair Stevens:** Commissioner Stead.

**Commissioner Stead:** I have some questions about the fire report. May be a good time to re-embark on time.

**Cody Riddle:** Madam Chair, Commissioner Stead, it would be best if someone else answers those.

**Madam Chair Stevens:** Okay. And for the record, I think we've got the fire chief up here with us.

**Ron Johnson (Division Chief of Fire Prevention):** Madam Chair and Commissioners, I'm Ron Johnson, Division Chief of Fire Prevention.

**Commissioner Stead:** Hello. Thank you for joining us. I was hoping you could speak to what we heard from Ms. Nelson about maybe this development taking some further steps to mitigate some problems up there and how you see that.

**Ron Johnson (Division Chief of Fire Prevention):** Sure. I guess, Madam Chair and Commissioners. If you can kind of give an overview of – she made points about they have 30 homes on a single point of access. That is one fire code requirement is a maximum number of homes on one point of access is 30. And then you can use fire sprinklers to go beyond that.

Additionally, though, is the 750 feet dead end maximum dead-end length. And so, it's actually the 750 feet dead end length is the part that I was recommending denial over.

**Madam Chair Stevens:** Thank you. I'd like to follow up on that if I could. So, according to counsel for the applicant, these actually don't qualify as dead-end streets because there are turnarounds both at the tea and at the cul de sacs on each of the stubbed. I don't even know what the right word is. But their turnarounds. If you could respond to that.

**Ron Johnson (Division Chief of Fire Prevention):** Yes. So, the definition that she's using for that is out of the planning code. The requirement for the 750 feet is out of the fire code. The fire code does not define dead end. Instead, it refers you to Merriam Webster's Collegiate Dictionary 11th Edition if there is not a definition in the fire code. That definition is an end as of a street without an exit.

And so, I've always interpreted that as if I'm driving down the street and get to the end, the exit is clear back where I started. Whether there's intersections or not, because those intersections do not take you to the exit.

**Madam Chair Stevens:** And so, and forgive me – I should probably know this. But is the fire code that you're referring to part of the Boise City code?

**Ron Johnson (Division Chief of Fire Prevention):** That's correct.

**Madam Chair Stevens:** That's what I thought. Okay. Just so we can – do we know what chapter it is?

**Ron Johnson (Division Chief of Fire Prevention):** It's in Appendix D.

**Madam Chair Stevens:** Appendix D as in dog?

**Ron Johnson (Division Chief of Fire Prevention):** Yeah. Specifically, D. It's table D103.4, where it says over 750 feet dead end length, special approval is required.

**Madam Chair Stevens:** Okay. Thank you. Further questions?

**Commissioner Finrock:** Okay. Quickly. Madam Chair.

**Madam Chair Stevens:** Commissioner Finrock.

**Commissioner Finrock:** This question is also – have we ever mitigated the road length by allowing for individual homes to have sprinklers? Has that happened? Are you aware of it?

**Ron Johnson (Division Chief of Fire Prevention):** Madam Chair, Commissioner, Finrock, yes, we have. And as the applicant cited, there are some subdivisions where we've gone out to 1600, 1585, 1579. The 1900 one was one platted in 1987. I don't know anything about that one.

But in these subdivisions, we've allowed them to go up to that – we try and keep it 1,400, but under certain circumstances have gone as far as 1,600 feet as long as we have fire sprinklers in those homes that are beyond the 750 feet. And if there's other hazards that warrant putting them in all, that can happen as well. The one, Wynn Hollow, where it was mentioned the Fire Department didn't stipulate sprinklers in those ones, they actually do all have fire sprinklers.

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** This is kind of a procedural question, Chief Johnson, but your letter is really a recommendation to the City Council and the Commission as to your overall assessment of the fire risk and fire safety associated with this particular application. Based on all that, what is your – are you still maintaining your recommendation that is in our package, based on what you've heard from the applicant, that your recommendation is that, as it's written, this should be denied?

**Ron Johnson (Division Chief of Fire Prevention):** Madam Chair, Commissioner Gillespie, yes, that's still my current recommendation for this application.

**Commissioner Gillespie:** Thank you very much.

**Commissioner Ansotegui:** Madam Chair.

**Madam Chair Stevens:** Commissioner Ansotegui.

**Commissioner Ansotegui:** I'd just like some clarification, again, on Table D-1034 Requirements for Dead End Fire Apparatus Access Roads, and then it indicates a turnaround is required. And over 750, as you mentioned in your letter there, special approval is required. Was there any special approval granted for a turnaround that's over 750 feet?

**Ron Johnson (Division Chief of Fire Prevention):** Madam Chair, Commissioners, there was no special approval or special consideration in this case. Like I say, with the longest dead-end length of over 2,230 feet, on this one I didn't feel that – that's just outside our comfort zone.

**Commissioner Ansotegui:** Thank you.

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** I have a question for the Chief and then for Miss Nelson. Chief, how big is the IFC? How many pages is it, roughly?

**Madam Chair Stevens:** That's the International Fire Code.

**Ron Johnson (Division Chief of Fire Prevention):** Madam Chair, Commissioner Gillespie, that's a good question. I believe it's in the 500-page range, somewhere.

**Commissioner Gillespie:** Okay, so it's a 500-page technical document. So, I have a question for the applicant's counsel. So, Miss Nelson, is it the applicant's position that the Fire Department – that we, the Commission, should disregard the Fire Department's technical assessment of a 500-page document, and instead substitute the applicant's technical

assessment? Is that your position, essentially? That we should disregard the Chief's assessment of the fire risk and his denial?

**Deborah Nelson (Attorney):** Chairman, Commissioner Gillespie, I think you can look at the examples that we pointed to in the record as the evidence of the interpretation that the Boise Fire Department has taken in every case that's been in the Foothills about roads that are over 750 feet. And so, to the extent there's any ambiguity between how the Fire Chief is interpreting the definition of dead-end streets versus how we have suggested it appears based on that table, that it's all about turnaround distances. Their standing interpretation for every development in the Foothills that we're aware of or that we've been made aware of, they haven't cited any other examples, has been that over 750 feet is okay if you use residential sprinklers.

And so, our interpretation is based on every other decision that they've made so far. It's not just something that we're making up conveniently for ours. But yes, we do, apparently, have a different interpretation than the Fire Chief about that particular definition. In order to find a different way to define it that's different than every application they've treated so far, they look outside to the Merriam definition. But your Boise Fire Code, that the International Fire Code is integrated into, has a definition.

So, this catch all of if it's not defined, we look to a different definition doesn't even apply. They have a definition in the same code that this is integrated into. And that seems like the most relevant place to look anyway, since it's a Boise City application. And that says that if you do not have a turnaround at the terminus, that is when it's a dead-end street. This is all about mobility. The same fire standards that we're interpreting from the Fire Code are about mobility. So that's what we're asking for to be applied, the same way it's been applied in every other development where they have interpreted this.

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** So, is it also your position that the Fire Department cannot adopt revised approval standards based on evolving fire risk on the Boise front? That they are, in a sense, bound by decisions made in the '80s or '90s and that we should look to those as controlling as opposed to the Fire Chief's stated opinion with respect to this application?

**Deborah Nelson (Attorney):** Madam Chairman, Commissioner Gillespie, no, that is not at all what we're saying. For one thing, these examples that we gave are all recent. The one that I mentioned where I just referred to the 1900 Street but didn't have the additional details was because it was

older, and we couldn't get access to the fire decision on it. Just as Mr. Johnson didn't know the details of that one either. But we know, we can see the length of the road.

The three examples that I provided details about are all in very recent years. And can they change their standard? Sure, it would be great if what was just described about over 1,400 to 1,600 feet this is what we do, if that were in the guidelines or the standards, then we would have to follow it. But that's not in the guidelines or the standards.

So, this isn't about changing the standards. This is about how you interpret the standards that are here. And if it's different than every other application of this in the Foothills with similar terrain, similar access, then that's arbitrary.

**Madam Chair Stevens:** Mr. Johnson, I'm going to follow up with you. I heard you say a minute ago that your calculation is over 2,000 feet or something along those lines. Is that right?

**Ron Johnson (Division Chief of Fire Prevention):** That's correct.

**Madam Chair Stevens:** And so, is that – and I'm personally – I will speak for myself, extremely hesitant to look at any other application because any other application before now had probably a hearing just like this and had all sorts of information in it that we are not privy to tonight. So, I personally am not going to even entertain that, myself, as an option of something to look at. But I'm sort of curious, from where we're standing tonight and the information, we have in front of us, we have over 2,000 feet. Has the Fire Department ever approved anything that long with a single access point in the Boise Foothills?

**Ron Johnson (Division Chief of Fire Prevention):** Madam Chair, Commissioners, I have not been part of approving anything of that length in the Boise Foothills. And going over the map in pretty good detail, the longest one I could find is that one was 1,900 feet that was platted back in the '80s.

**Madam Chair Stevens:** And how long is this one? Can you remind me?

**Ron Johnson (Division Chief of Fire Prevention):** I'm sorry?

**Madam Chair Stevens:** How long is this one?

**Ron Johnson (Division Chief of Fire Prevention):** The one we're talking about here is – longest of the three, is 2,230 feet.

**Madam Chair Stevens:** Okay.

**Commissioner Bratnober:** Madam Chair.

**Madam Chair Stevens:** Commissioner Bratnober.

**Commissioner Bratnober:** I have a question for the applicant, your soil expert, if that person's here or someone who can answer for that?

**Deborah Nelson (Attorney):** Yes, we do have our Geotechnical Engineer here.

**Madam Chair Stevens:** If you could introduce yourself, then give us your name and address for the record, please. Thank you.

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Adrian Mascorro, Allwest Testing & Engineering, Meridian, Idaho is where we're based out of.

**Commissioner Bratnober:** Hi and thank you. A couple things, so, first of all, it looks like there were 15 test points dug. Is that correct?

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Correct.

**Commissioner Bratnober:** How many of those showed the expansion soils?

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Two in the area that we're talking about.

**Commissioner Bratnober:** Okay, and those were to a depth of 18 feet, right?

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Correct.

**Commissioner Bratnober:** So, I'm obviously not a soil expert. So, you got another 62 feet underneath that for some of these cuts. How confident are you that the soil structure is going to be acceptable as you go lower, and why?

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** So, I've got experience in the surrounding areas. The soils are very similar to what we've encountered in the other areas. Obviously, this was a preliminary report in nature, as is required. So, we will find out in the final investigation what those soils conditions will be.

**Commissioner Bratnober:** Is the final investigation – does that mean after the cut is made?

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** No, prior.

**Commissioner Bratnober:** Core samples or something like that? Is that –

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Correct. We will bore holes down deeper than 80 foot once all the final plans are developed. And it's just a process that we go through. This is preliminary in nature and this is the hillside requirement for the ordinance.

**Commissioner Bratnober:** Okay, and what happens if you find something amiss in those bore holes?

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Then recommendations are going to be made to make sure that the development occurs in such a manner that is safe.

**Commissioner Bratnober:** Okay, as regards to the places with expansion soils, how big an area – are there houses planned over top of that stuff? What's –

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** So, the areas were one to two feet, max. So, any of that soil will be stripped off naturally, can be stripped off. So, there wasn't much of concern as far as expansive soils.

**Commissioner Bratnober:** Okay, we just don't know what's underneath it in the other 62 feet and we'll find that out.

**Adrian Mascorro (Allwest Testing & Engineering, Inc):** Sure, we will, correct.

**Commissioner Bratnober:** Thank you.

**Madam Chair Stevens:** Other questions for staff or the applicant or the neighborhood?

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** So, I'd like to move on to this question of access in this lot 19. Cody, what's the City's position tonight on, I think, the legal questions the applicant raised with respect to the, I'll call it, the old CUP restrictions on lot 19?

**Cody Riddle:** Madam Chair, Commissioner Gillespie, in our mind we've been clear since day one. We believe the requirement to modify the – nothing previous Commission or Council did can't be undone. But there's a process to ask. In our mind, that process is to ask to vacate that plat note and modify that PUD. That opens the question up to the conditional use permit findings. And in our mind that should, for any project to be approved on this site that takes access through that lot, that should be included in the request.

**Commissioner Gillespie:** Thank you.

**Madam Chair Stevens:** I'd like to ask a follow-up on that. So, I think everybody's been made – it's been very clear both from staff and the applicant that these are different properties, different applications, right? And that somehow the previous application has restricted access and land-locked this particular property that we're talking about. But I guess I'm curious if that application has done that to the property that we're – if the previous CUP has landlocked and sort of restricted access to the existing property and we agree that they're separate pieces of property, they're separate applications, how can this application then have some sort of modification on an application for that piece of property?

**Cody Riddle:** Madam Chair, this property didn't have access to that street before that project was approved. So, that hasn't changed.

**Madam Chair Stevens:** Okay, so my read of that is right then. We can't use an application on a different piece of land to override a CUP condition on a different piece of land.

**Cody Riddle:** Madam Chair, that's our take. And they're platting across that lot now, or they're proposing to plat across that lot now.

**Madam Chair Stevens:** Okay, and with regard to ACHD having approved that and the City of Boise having a condition on that property, has there been any discussion between ACHD and the City of Boise with regard to ACHD, I guess I'll say, overriding a condition or a plat note on this piece of property?

**Cody Riddle:** Madam Chair, members of the Commission, ACHD isn't the land use decision making body. Their approval was for width of the roads, things like that, but certainly not the use of this property, modification to another conditional use permit. They don't have the statutory authority to make those kinds of decisions.

**Madam Chair Stevens:** And if I may, I'm going to ask another question because I'm on an access thing. I don't want to forget about it. So, you said something in your presentation about if we were to condition this or to deny it to provide sort of guidance for how to – how this could be developed in the future. And you said maybe cluster closer to the existing access. And then we heard from the applicant that the existing access, which is an easement across the golf courses, is not accessible, doesn't support a road. So, can you tell me more about this? Can you give me more specifics about what you were talking about and more about the easement across the golf course that is potentially another access point?

**Cody Riddle:** Certainly, Madam Chair. I wasn't referring to access across the golf course at all. I was suggesting if they were already proposing to modify that unbuildable lot, that perhaps a development could be concentrated down in this portion of the site where they're already proposing access to Winter Camp down in this location. I wasn't talking or suggesting access should occur from that golf course at all.

**Madam Chair Stevens:** Thank you.

**Commissioner Finrock:** Madam Chair.

**Madam Chair Stevens:** Commissioner Finrock.

**Commissioner Finrock:** I have a question for Cody. Did the property owner agree to the restrictions of lot 19 when they were set forth in 2008 and 2013?

**Cody Riddle:** Madam Chair, Commissioner Finrock, that wasn't the subject of an appeal or legal proceedings after that. So when it was originally imposed on that plat and then subsequently the language changed in a modification there wasn't an objection that I'm aware of.

**Commissioner Finrock:** Thank you.

**Madam Chair Stevens:** And just to clarify on that, the development went forward with that restriction applied, correct? That condition?

**Cody Riddle:** Madam Chair, that's correct. The plat was signed, submitted and recorded with that restriction.

**Commissioner Stead:** Madam Chair.

**Madam Chair Stevens:** Commissioner Stead.

**Commissioner Stead:** I have maybe some design questions for the applicant. I'm looking at, let's see, Section 11-07-08 or our Development and Design Standards for Hillside and Foothills Development Standards Section 5. There are some standards laid out here that include development shall be oriented on the site so that grading and other site preparations are kept to a minimum. Shaping shall blend in with existing topography to minimize the necessity of padding or terracing of the building sites. Building pads and terraces shall be graded to blend in to the natural contours. Can you speak to those standards on this design? It's page 268 of the Boise Development Code.

**Kevin McCarthy (KM Engineering):** Good evening, Kevin McCarthy, KM Engineering, 9233 West State Street in Boise. With the topography that we have coming in in our access point and the limitations we had on the road coming in, we did the best we could to try to follow the terrain and

limit the grading to the extent possible. We understand there's quite a bit of cuts and fills there, but with a 10% road limitation and the zoning such as it is with the 20,000 square feet, this is what we came up with the existing topography to make it work within the confines that our client wanted.

**Commissioner Stead:** Thank you.

**Kevin McCarthy (KM Engineering):** You're welcome.

**Madam Chair Stevens:** Other questions? Okay, I have a few for, probably, Boise City Public Works Engineering, Jason, I'm not sure who – somebody over there. Hi.

**Jason Taylor (Public Works):** Good evening, Jason Taylor –

**Madam Chair Stevens:** So, we had a lot of – oh, sorry, yeah, go ahead, no please do.

**Jason Taylor (Public Works):** I was going to do that part.

**Madam Chair Stevens:** Please do.

**Jason Taylor (Public Works):** Jason Taylor, Public Works Engineering.

**Madam Chair Stevens:** Thank you.

**Jason Taylor (Public Works):** 150 North Capital.

**Madam Chair Stevens:** City Hall.

**Jason Taylor (Public Works):** City Hall, there you go.

**Madam Chair Stevens:** Got it. So, one of the – we got a lot of correspondence from people who live in the immediate area, in Eyrie Canyon and Arrow Villa and all those streets over in the area regarding settlement of their houses that are, in most cases, not more than, let's say, a decade old. And so I'm just curious if Boise City has any information about that particular issue in these other areas that are adjacent to, and we were just told by the applicant's engineer that this particular project has soils that are exactly like that. So, if you could speak – if you know anything about any of those settling issues in some of the canyons nearby.

**Jason Taylor (Public Works):** The information that I'm aware of is from the repairs of several houses in the original Eyrie Canyon phase, number one. There is mention of another house in one of the past phases that has experienced some settlement. I don't know particulars, I have some hearsay from the builders that are repairing them, that kind of stuff. I haven't actually read any engineering reports of why it all settled. We do

have engineering approval letters and compaction testing from all the phases. So, the material was compacted properly per the professional geotechnical engineers of record for those subdivisions. And we have an approval letter from when that subdivision was done. That's about as far as I know what happened from the original phase, which is well over 10 years old at this point.

**Madam Chair Stevens:** You're going to have to be patient with me because I have something else I want to ask, but I just have to find the right spot.

**Jason Taylor (Public Works):** I have all evening.

**Madam Chair Stevens:** Apparently so do a lot of other people. If anybody else wants to jump in while I'm looking for this –

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** While you're reloading, I'll take a question. I have a question for the applicant's counsel, again. And this is really – I'm just trying to figure out this issue of the comp plan and how controlling it is. And for the record, this has been an active source of discussion since I've been on the Commission for six or seven years.

So, Miss Nelson, I just want to point out to page – you're right, within the hillside development permit section, which begins on page 71, there are criteria for approval. And notably absent is the line, must comply with the comprehensive plan, which you are correct in pointing out is present in the CUP condition and PUD and rezone and a couple of others. So, that's correct. But also, on page 71 section 17, which is hillside development, so this is in the procedure of the permit, under A, Purpose and Applicability, so this is the very first sentence in that section.

And this was pointed out by the neighborhood association, it says, to ensure development of sloped lands occurs in a manner consistent with the comprehensive plan, goals, and objectives. So, given that sentence at the very beginning of the procedure, yet it's absent in the approval criteria, how would you suggest, or what's your suggestion to the commission on how to interpret that?

**Deborah Nelson (Attorney):** Madam Chairman, Commissioner Gillespie, that purpose statement that's at the beginning of the Hillside technical requirements is the explanation for having the Hillside technical components. Those are all included to ensure compliance with the comprehensive plan. The City has to adopt ordinances that are in accordance with the comprehensive plan. So, when you have a

comprehensive – or a zoning ordinance amendment, that is a time when you have to have compliance with the comprehensive plan. That statement describes that process that the City went through to do that and has to every time in accordance with the criteria for those kinds of applications.

When the city wants to require compliance with the comprehensive plan, they have done so clearly in their criteria, and it's obviously absent here. But it's not just a legal technicality. It's practical. At this point they already have all of those discretionary entitlements in place when you look at things like the comprehensive plan. Now they have residential zoning, they're just moving forward, they just need to meet the engineering requirements that apply here.

**Commissioner Gillespie:** Thank you.

**Commissioner Finrock:** Madam Chair.

**Madam Chair Stevens:** Commissioner Finrock.

**Commissioner Finrock:** I have a question for Public Works. The preliminary geotechnical report, actually it says that it basically studied – or it analyzed soil conditions to a depth of 18 feet while the project includes cut and fill exceeding 80 feet. Is that a typical preliminary report? Or would you expect them to go deeper? What's the standard?

**Jason Taylor (Public Works):** My background's in soil as well, so this is a pretty standard boilerplate type of geotech report. The whole reason for the preliminary versus final geotech reports is so the developer's not out \$100,000 in drilling before we get your approval to actually – the right to build a subdivision. So, we allow them to stage the reports, the preliminary hydrology, preliminary geotech, and preliminary grading plans in order to come up with a general idea, a general scope of is this doable or not?

Now, luckily with engineering, pretty much everything is doable. It's just time and money, right? So, for them to perform a geotech down to 18 feet, that's typically the limit of a backhoe and the state law says that if you go deeper than 18 feet, you need a well driller's permit. So, the geotechs typically limit that for a preliminary.

**Commissioner Finrock:** Thank you.

**Jason Taylor (Public Works):** You're welcome.

**Madam Chair Stevens:** So I found what I was looking for, and that was in your report, or the letter that you wrote, you said categorically in bold and underline that you cannot recommend approval or conclude that the proposed development is in general compliance with the technical

requirements of the Hillside and Foothills Area Development Ordinance. Now, I guess staff and everybody has come to the agreement that the Foothills Area Development Ordinance is not applicable here, correct?

**Jason Taylor (Public Works):** Yeah, that part of the zoning ordinance has two sections. So, typically in my reports I reference both of them. Public Works and Engineering tends to look at the engineering. The zoning part is typically up to the planning department. I usually don't get into the applications of knowing if there's a CUP or knowing if there's a rezone or knowing if they need some other entitlements. So I keep the same type of boilerplate numbers in there. If it doesn't apply, I'm sorry, it was an error on my part.

**Madam Chair Stevens:** Okay, and I guess my follow-up on that then is, let's just say for the sake of argument we all agree that it doesn't apply, which it sounds like staff and everybody does, does it change your recommendation that you cannot recommend approval?

**Jason Taylor (Public Works):** It does not change my recommendation. My recommendation is based off the Public Works Technical Guidance Manual for Preliminary Grading Plans, Geotech, and Hydrology. In this case, the preliminary grading plan had deficiencies. They had slopes steeper than two to one. Well, our manual doesn't allow that unless the geotech approves it.

The geotech never got into that detail of work because this is a preliminary geotech. The grades, the grading – the grading didn't blend – or, I'm sorry, the cut and fills didn't balance. That's a requirement of our technical guidance manual. So, there was several little – as Cody said, there's things that can be done to remedy that very easily. It's just, it wasn't done with the plans that were presented to us.

**Madam Chair Stevens:** And so, if I could, I'm just going to keep going here. If there was to be a recommendation for approval and we said, here's what you have to do, you have to be smaller than two to one. You have to be whatever the other things were you just said, then you would be okay with this.

**Jason Taylor (Public Works):** Yes, and essentially, I essentially did that with the follow-up of that sentence. It says, hey, these are the things that need to be fixed with the final grading plans and the final geotech and hydrology. I did list those out, but as was presented, they did not meet that for the preliminary.

**Madam Chair Stevens:** Okay, so I guess I'm going to ask you a question. This is a category two, is that right, hillside?

**Jason Taylor (Public Works):** Three.

**Madam Chair Stevens:** Three, okay.

**Jason Taylor (Public Works):** So, subdivisions are the three.

**Madam Chair Stevens:** This may be a question for Cody, I'm not sure, but do the – categories go up in sort of severity, I guess I would say, right? So, one is sort of minor, they even use that term in the category in the code. Two is a little bit more excessive, and then three is the biggest, most significant permit you can get, correct?

**Cody Riddle:** Madam Chair, that's correct.

**Madam Chair Stevens:** Okay, and so do all of the requirements in the code of category one and category two also apply to category three?

**Cody Riddle:** Madam Chair, that's correct. Category one is something we review just as part of a building permit. Category two is a little more severe grading that there's actually administrative application. And then category three is when we get into a subdivision, conditional use permit, things like that.

**Madam Chair Stevens:** So, I wanted to make sure that the question I'm going to ask is applicable, which is why I had to go through all that. So, thank you for your patience. So, in category two, one of the requirements for a category two permit is that excavation or fill which exceeds the limits is defined by international building code and in Appendix J, dah, dah, dah, dah, dah, dah. What are those limits that are defined in that code? And where does this application fall within that code?

**Jason Taylor (Public Works):** What you're referring to is the amount of cubic yards to get that up. It's 50, 50 cubic yards gets you into a more severe category. Or it gets you into that category two. It depends on how much grading is occurring. I don't know – I can't think of, in my time here in seven years, I can't think of a subdivision that's been a category two. It's always a category three because everything is very excessive than what the natural topography is. That's just the nature of the beast, I guess, on those.

**Madam Chair Stevens:** Okay, and I'm hoping that you can help us then with – if we can bring up that Appendix A that was in the staff report. So, there seems to be some disagreement about what some of these numbers mean. So, I was just hoping you could walk us through some of these. I was confused, too, only because it didn't look like we were comparing like information. And so, I was just hoping you could clarify for the record and for me, personally, as I consider this application, what we're looking at and how this compares to some of these other ones that we've seen over the years.

**Jason Taylor (Public Works):** So, this was our attempt to try to, I guess, answer the questions of what is excessive. That's everybody's – I mean, anybody can have a definition of what excessive is to you or to me. But it's not defined anywhere in our code. So, it's very difficult for us to say that.

So, what I tried to come up with here is kind of an apples to apples comparison. And the applicant was very nice in her discussion about that. We just tried to – we pulled these numbers from grading permits. So, after all the grading plans were submitted to us, all the final stuff, the applicants always come in for a grading permit and they have to provide us what that cut and fill number is. And based on the building code, we basically charge them a grading permit fee based on total movement of material.

So, if you dig it out of the ground here and put it over here, we're counting it twice. So, that's a total movement, total yards. It all depends on how much time it's going to take in order to do that grading, right? If you dig it out of here and put it over here, that's one thing and then trucking it in and out. So, this was my attempt.

And what it came up with was Eyrie Terraces was very high compared to most other subdivisions. Now, if you notice on the very top, we did separate it out for cut and fill or just fill only. So, the fill only, if we do this – and I understand that the lot size has changed, there's a lot of factors that change how far they're going to haul it, just the type of soil, the expansive of the soil, how much it'll compact, shrink, or swell. So, there's lots of factors in there. I'm just trying to give a broad stroke of just something for you guys to look at and say, okay, how much did Boulder do versus what this one's trying to do?

**Madam Chair Stevens:** And so, the applicant's representative pointed out that in the second table down, under total cubic yards, that we would have to double that because it's only the fill, or only the cut, one of the two. Is that correct or does that number represent the same number as line one of the upper table? In other words, is that the total number including cut and fill in that lower table left column, middle column?

**Jason Taylor (Public Works):** Yeah, so the total cubic yards that's on that list came from the grading applications that were submitted to us. The grading application says, total amount of material moved, cut and fill quantities. So, that's what was provided to us. Now, I don't know if this is how we do it, but I don't ever go back, when they give us a grading permit that's not my part of looking at the fees. That's typically the building department. So, I don't go and check what those numbers were. I went through all these applications, I picked that number, I put it on the list. But it does say that on the application, cut and fill quantities, total earth movement or disturbed earth, I think is what it says.

**Madam Chair Stevens:** Okay, so in your mind, that is not a number that needs to be doubled.

**Jason Taylor (Public Works):** No.

**Madam Chair Stevens:** Okay, great.

**Jason Taylor (Public Works):** I got it off the application. Unless every one of the applicants gave us false information, I don't know, I didn't go through it.

**Madam Chair Stevens:** Okay, thank you. Other questions?

**Commissioner Bratnober:** Madam Chair.

**Madam Chair Stevens:** Commissioner Bratnober.

**Commissioner Bratnober:** Can you tell me, is an 80-foot cut in this area, is that typical?

**Jason Taylor (Public Works):** I've seen them. There's been a lot of subdivisions that we've done, even prior to the hillside ordinance that have done a lot of cut. I forget what the last phase of Eyrie did, but it was probably not 80, but I think Harris North, I think they had well over 80.

**Commissioner Bratnober:** Thank you.

**Madam Chair Stevens:** Other questions for staff or the applicant? Okay, thank you. We're going to go ahead and take a five-minute break – 10 minute? Five, 10, what do you guys think? Five-minute break and we'll come back and start public testimony.

[Break]

All right, I love all the excitement. This is great. Let's get started. All right, so here's how we're going to do – everybody, we are going to get started. Thank you, Commissioner Gillespie for the clapping.

So here's how we're going to do this. We obviously have a lot of folks in the room who are going to want to testify tonight, and so we want to make sure that we are as efficient as possible. So, I'm going to sort of call who is going to be in the bullpen coming up next. So, I'm going to read a couple names ahead and I'd like for a couple chairs in the front row to stay empty so that those folks who are going to be coming up next can sit there. You didn't have to move. I didn't need all five of them, that's okay.

Okay, so we're going to start the neighborhood associations. I know that there are a lot of them who have weighed in on this application, and we have received that testimony, that written testimony. They're going to be

given – their representatives are going to be given the three minutes that all the other folks are going to be given. So, we're going to go ahead and start with Suzanne Stone followed by Megan Fuller followed by Deanna Smith.

**Suzanne Stone:** Madam Chair, members of the Commission, my name is Suzanne Stone, I'm the President of the Collister Neighborhood Association, and we really appreciate the opportunity to speak to you tonight about our concerns. Given that Tim Brewer has given such a comprehensive view from our neighborhoods, I'm not going to repeat that. I'm just going to offer a few corrections and some of the information that was given to us by members of our residents who were unable to be here tonight. One of the things that I'd like to point to is that there was an incorrect statement that the closest fire station was Cartwright Station, which is, I believe, the number two station. That's actually station number nine which would be servicing this area, is my understanding.

That's at Sycamore and Taft. It's about – it's over three miles, I believe. But the biggest part about it is that it goes right through my neighborhood, and there's on Collister, on Catalpa itself, there's at least seven speed bumps on the one portion of road there, so it's a pretty slow road. In addition, it goes through an actual neighborhood, 20 mile an hour roads. So, it's not a very fast response time from that particular fire station. So, I wanted to make sure you could adjust that in your notes.

Secondly, we have worked through the comments by the Public Works, by the Fire Department, but beyond that we have had concerns from our neighborhood about just the general Foothills protection in that area. We had discussions with them at our quarterly meetings, we've done a survey through the neighborhood, and our survey was the most widely used one that we've had ever with our residents in the past. 97%, just about, of our residents are wildly opposed to this, and are actually asking the City to consider what is the greater good. And I noticed the sign that was up here just a moment ago and thought that Foothills protection is very important to our residents. It's part of the quality of life here in Boise, and putting large homes, and just a handful of them, doesn't really help with our housing problems here in the city.

It really only adds to the burden, especially as one of our residents pointed out, if this becomes this issue like the other ones in the Foothills where we've had to pay over \$1 million to help mitigate for soil erosion issues and things like that, that it really isn't in the greater good to approve this. So, we have submitted our comments in detail. I know I only have a few seconds left, but I think, in the words of one of my residents is, once it's gone, it is gone.

One of the greatest attractions to Boise is the Foothills trail system. If development keeps chipping away at the flora and fauna of this treasure, the neighborhood and the city loses value. We believe that strongly, and we ask that the City consider adding this to the current recreational trail site systems that we have right now, because it is worth our investment for our future residents here as well as the ones who live here now, thank you.

**Madam Chair Stevens:** Thank you. Megan Fuller followed by Deanna Smith and Kirstin Stilton. Or maybe it's Kristin, I'm sorry.

**Megan Fuller:** Hi, Commissioners. Tim's going to put up a slide for me. While he does that, my name is Megan Fuller. I live at 4835 North Villa Ridge Way, Boise. And when we talk about lot 19, I was the Tim of that neighborhood association 10 years ago. And we worked tirelessly to find common ground with the developer and find concessions so that he could have the 100 plus homes that were built in that Foothills gully.

And we definitely believed that by getting lot 19 dubbed unbuildable we were preventing any further development of it, including roads. The developer had gone from doing two-story duplexes in that lot to nothing to eventually putting a trail there. The trail that he put there still isn't in an easement. He tends to just put things where he wants and do what he wants.

The first thing – I want to talk about two things. The grandfathered beginnings of this development that are in question, this lot, as well as the rest of it, if you look back at what the city was considering before there was a Foothills Ordinance, or whatever the proper term for that thing is that we can't use tonight, there was a development proposed for this entire area that was CU44-94, meaning it was done in 1994. And they had metro plan goals, and they very clearly spoke to the hazards specific to the Foothills development that's regulated to protect current and future property owners from slides, floods, and erosions. And all of those things are concerns with this development.

Development densities may vary based on the land itself, referencing engineering concerns, and the capacity of public services, referencing fire. So, even though some of those things that we have in finer detail today, we might not be able to use those codes. I would strongly think that if you went back to what Boise was using in those time frames, you would find similar concerns and similar ways to deny this. So, on to lot 19, the points have been made very clear.

I'd like to point out this slide that I have on this screen now. That was a premiere ridge in our neighborhood prior to 40 feet being taken off the top of it. So the top of that ridge extended all the way to the base of the homes – these homes here. From this angle, you would have just barely seen the tops of these trees because this ridge came that high.

And in exchange for doing that, while we fought really hard to move the density from that down into the valleys, that was something that the developer wasn't willing to give us as a concession. So, we basically said, talk to us about apartments, talk to us about anything that leaves our ridges intact. And he refused to do that. In exchange for that, we got this lot 19 deemed as open space –

**Clerk:** Time.

**Megan Fuller:** And the only way to do that was with the unbuildable.

**Madam Chair Stevens:** Thank you. Deanna Smith followed by Kristin Stilton and Arlene Johnson.

**Deanna Smith (East End Neighborhood Association):** Good evening Commissioners, Deanna Smith, 1208 East Jefferson Street. I'm here tonight representing the East End Neighborhood Association. The board voted at its last board meeting to support your staff's position and the Central Foothills Neighborhood Association on this application for all the reasons you've heard. So, I won't go into that, but the concerns of the cut and fill, the concerns around fire, as well as the compromising of our Foothills Plan Ordinance. I did want to add to that, however, after listening tonight, I was kind of the outlier on the board, I was not able to attend that particular meeting with lots of questions, because it looked very complicated as I've learned tonight it is.

So, I just wanted to point one thing out to you that I'm hearing that bothers me and I hope you'll take this to heart that you have a challenging legal question before you tonight, I believe. However, what I'm hearing is you basically have an applicant who is trying to bypass the Foothills Plan and the Foothills Ordinance by standing on zoning that was established in 1981. And that is a simplified version of what was presented to you, but essentially that's my interpretation. And I'm not a lawyer, but that's what I was hearing. And I think it's important to stop and think about what that means.

A lot has changed in Boise since 1981. And I do know that the intent and the desires that have been brought forward by other individuals tonight about the comprehensive plan and about our Foothills Ordinance, I was involved with the 10-year process to adopt that Foothills Ordinance, which involved many compromises. And I do know that a conversation during that time was not changing existing zoning code because it's very difficult

for cities to do in the state of Idaho. So, I think I encourage you, and hope you find a way, to deny this tonight and not allow 1981 zoning code to dictate a very, very important decision for the future development of our city, thank you.

**Madam Chair Stevens:** Thank you. Kristin Stilton, Arlene Johnson, and then Judy can't read your last name on Arrow Villa Way.

**Kristin Stilton:** Commissioners, I am Kristin Stilton 2198 West Bent Bow Court. This project combines two unrelated parcels without due process. The 30-lot development is attached to a parcel owned by Land Hollows RLLP Kit Bedard. There is no access to this property. The developer is trying to override the required steps and obfuscate the intentions of the proposal before us by not addressing requirements for the unrelated parcel. 2317 Winter Camp, owned by SRS Properties is already a labeled address described property from an older approved project, CUP08-00011.

It is neither owned by the developer nor the HOA of this prior development. The parcel is most often referred to as the unbuildable lot. It was platted as such. Officially described as lot 19 plot 1 of Eyrie Canyon Sub 5, the lot is an untenable and illogical access to the development proposed. Its status as unbuildable open space was argued ad nauseum by the Commissioners in 2008, 2009, and the 2013 CUP time extension meetings.

It is encumbered by legally binding plat notes, conditions, and requirements that have not been addressed with this project. Any consideration of using the secondary parcel for anything, including a road through it, is subject first to a CUP modification and a vacation of the existing, legally binding plat notes and conditions. These conditions were strengthened through the time extension granted via CUP13-0006. The applicant did not appeal the stated conditions of the original, nor the extension CUP.

They cannot be ignored. No one of sound mind would envision that something considered unbuildable open space could now include a road that requires chopping 50 feet of natural terrain and adds retaining walls up to 18 feet in height and wide swaths of pavement for required roads and sidewalks just to make it from point A to point B. The proposal before us also does not address the fact that this secondary Eyrie lot was appealed to the assessor in 2015 with sworn, signed testimony asserting it was unbuildable and too steep to do anything with. It reduced the value from 135,000 to the current 47,200.

To close the loop and emphasize the fact that these developers and land owners know exactly what they have, the land island where these 30 homes are proposed was also appealed to the assessor just this June. A

representative of the property asserted through signed testimony that the property has no access, is too steep, and is not developable. That reduced the tax obligation on the assessed value in 2019 from \$2.454 million to the current 600,000. One can't have it both ways.

**Madam Chair Stevens:** Thank you. Judy followed by – sorry, Arlene followed by Judy and then Mark LaSalle.

**Arlene Johnson:** I'm Arlene Johnson at 2326 West Winter Camp Drive. We purchased the house at the corner of Winter Camp Drive and Villa Ridge Way one year ago. The unbuildable lot 19 is across the street from us. The steep slope on the Winter Camp side of the lot appears to be slowly moving and eroding toward the sidewalk. Hopefully, the vibrations during construction do not cause this hill to become more unstable and slough further over Winter Camp Drive.

Several folks who own houses in Eyrie Canyon that were built on local fill material, some individual property owners have had to pay over \$100,000 to correct damage from and prevent problems resulting from soil shifting and settling. I'm sure you have some testimony from these homeowners. The city, the developer's engineers, and the developer's contractors have not accepted responsibility for this hazard and severe damage to property. The local soil used for fill in the existing Eyrie Canyon subdivision is obviously the problem. If the soil is unable to support development on the existing, less steep area, then why would the City consider allowing the use of the same local soil to fill gulches as deep as 70 feet in this proposed development?

Past and existing track records point to soil instability as likely outcome of the proposed Eyrie terraces. Noisy, dusty construction traffic such as large earth moving graders and multiple trailer loads of dirt planned for removal will have to have an adverse impact on our already distressed street and homes on Villa Ridge Way. The quantity of dirt hauling, trips in the lightweight and high weight vehicles will devastate Villa Ridge Way and all of the properties along it.

So, until the City, number one, explains to us what's going on with the homes on Villa Ridge Way, the road at Goshawk that's sinking, and other excessive water issues, and, number two, presents a failsafe plan to prevent further adverse impacts to property, you have no business considering this extreme grading proposal, especially after the terraced [inaudible 02:08:10]. Considering the potential adverse impacts on neighborhood property, will the City or the developer guarantee my family's investment in our house if this project is approved? Thank you.

**Madam Chair Stevens:** Thank you. Judy, I'm sorry, I can't read your last name, followed by Mark LaSalle and then Diane McConnaughey.

**Judy Myers:** It's fine. Hi, I'm Judy Myers. I've been in the Boise area for close to 50 years.

**Madam Chair Stevens:** Can you give us your address, please?

**Judy Myers:** And my address is 4192 North Arrow Villa Way. I'm a retired school teacher from the Boise district for 35 years. I'm very familiar with the Foothills, the population, and so forth. My testimony was 18 minutes late, so you probably won't have it on file, but I want to thank you for being allowed to testify. The proposed area that we're taking a look at is not conducive for building. And I'm a bit passionate about it.

Water containment will be an issue along with the danger of the hill slippage. We used to live in Foothills East. We also lived in Somerset. And I have a pretty good idea of the underground springs. The soil in this area is not stable, and the proposed holding ponds will not contain the water.

This will jeopardize the safety of the homes below the proposed development. And passionately I will say, our home demonstrates the lack of soil quality in the area for the development and is a prime example of what happens to homes below the hillside where homes exist. Across the street, there is also a holding pond for drainage, and quite honestly, does not work. The road has sunk three inches along with our sidewalk, our driveway, and garage flooring. I have had a geotech firm come out and test the soil to discover why my home is sinking.

But the ground is not solid. They talked – I listened to the compacting down. They compacted it down, but what's going on underneath that? And particles of soil are being taken away as at night I look at the cracks in my ceilings. This has resulted, by carrying these soil particles away from the home, it's resulted in severe structural damage throughout my home.

The pressure of added homes on top of the hillside have added continual water issues below. I honestly believe this will happen to the homes along Winter Camp, which will be below this proposed development. The city does need to investigate why over five homes in this current development along Winter Camp and Arrow Villa Way are now requiring structural repair due to unstable soil. This should be done before there is any consideration at all for building in the Central Foothills. Thank you for the time.

**Madam Chair Stevens:** Diane McConnaughey followed – I'm sorry, Mark LaSalle followed by Diane McConnaughey and then David Meyer.

**Mark LaSalle:** Good evening, Madam Chairman, Planning and Zoning Committee Members, and City of Boise staff, some of whom I've traded lots of emails with. My name is Mark LaSalle, I live at 4689 Arrow Villa Way here in Boise, and this is my Foothills story. So, thank you for this opportunity

to have my voice heard. As with many of you, I've lived most of my life in Idaho, from small towns to large towns. A connection to nature and open spaces is important to me as to most other Idahoans that I know.

After college, I knew that I wanted to come to Boise for access to opportunity, recreation, quality of life, hopefully to raise a family. Immediately upon moving here I was amazed by two primary things, the Greenbelt, the ribbon of city parks, and the Foothills, ubiquitous access to nature and possibility. At the time I did not know whether these rare gems were the result of public support or visionary leaders and land stewards. At the time it did not matter. I found great joy spending the afternoon at Ann Morrison or on the Greenbelt, though more often the Foothills were calling to me.

On a typical day I would arrive home from work and within minutes be in the Foothills on my bike with the hustle and stress of the day fading into the background. Now, with 20 years in Boise, I've experienced much more of what my town offers. I've owned homes, I've worked and played here, and started a family. I've grown to enjoy and understand the value of many more aspects of Boise open spaces, riding bikes with my kids on the Greenbelt, and later on the Ridge to River trails as their abilities increased.

Running and hiking, nature education on a multitude of trails, respite, refuge, a connection with the world outside ourselves. I applaud the actions of our city leaders to create and hold in trust the open spaces of Boise. These are important aspects of the Boise experience, open to all citizens. The Boise Blueprint and the Foothills development plans are meaningful guides for decision makers in the past, now, and into the future.

Prior input from Planning and Zoning decision makers make it clear that open space matters and creates value for current and future generations. Development can be done properly, responsibly. There are many examples of this throughout Boise, and there are also counter examples. In the case of these proposed developments, the scales tip more toward the latter.

We have been cautioned to be careful with expressing NIMBY sentiments. In terms of equity and individual rights, this makes sense. To this sentiment, I pause at the following. What are the Foothills to you, to us, to the 3,300 people that signed the petition for open space, for responsible development in the Foothills? I argue strongly that the Foothills are Boise's backyard, a place of rest and recreation. Protect our backyard. Thank you.

**Madam Chair Stevens:** Thank you, Mr. LaSalle. Diane McConnaughey followed by David Meyer and Hobart Swan. If you could pull that down, that would be great.

**Diane McConnaughey:** Way down. Diane McConnaughey, 4315 Castlebar Court. Commissioners, thank you for letting me testify tonight. You have heard excellent testimony from Planning and Zoning, the Fire Department, and the representatives of the various neighborhood associations. From a personal standpoint, I would urge you to deny this permit for the reasons they gave you. On a personal reason, on a personal basis, I ask that you consider purchasing the land as part of Boise's open space. It is popular with walkers, joggers, hikers, bikers, and dogs. It would help complete the reserve at Hillside by connecting existing trails with those so-called road trails.

The area is beautiful. I cannot imagine what it would look like with its head chopped off. The demand for open space will grow as Boise grows. Open space in the Foothills provides a recreational opportunity that cannot be provided by city parks. But I am a strong supporter of city parks and dog parks.

I think developers should be asked to consider what kind of open space they can provide in their subdivisions. If they can't do it, they should be required to help provide safe access for bicycles and pedestrians to existing parks. I hope we don't find ourselves singing a John Prine song and saying I'm sorry my son, Eyrle Subdivisions has hauled it away.

**Madam Chair Stevens:** Thank you. David Meyer followed by Hobart Swan and Eric Willadsen.

**David Meyer:** Hello, my name is David Meyer, I live at 2934 Hillway Drive. Madam Chair, Commissioners, this committee has the difficult task of managing growth, property rights, and quality of life, and I thank you for the opportunity to speak tonight. I strongly encourage you to deny the proposal.

Please consider my own experience as a homeowner in this area. My house is 55 years old. I've owned it for 25 years. It's adjacent to the Hillside to the Hollows property. The view is terrific, however, the lot is flat, it's adjacent to a 20% grade hillside, and, to date, I've spent nearly \$50,000 on retaining wall. That includes \$17,000 this last spring.

Something that I didn't know 25 years ago when I purchased this house is that soil movement is not covered by homeowner's insurance policies. My next-door neighbor's house built 17 years ago, is watching her back deck slowly move away from the foundation. She's not willing to fix it permanently because the cost of the retaining wall could reach six figures. Another neighbor's house, six doors down from me, had to

replace the failing retaining wall that the builder had installed. I haven't dared ask how much that cost.

Engineers approved the developments of each of these lots. The math seemed to work. But it's left to attorneys and the court systems, not engineers, to decide who pays for the retaining walls. And with homes like mine, it's the homeowner. Yes, people are moving here, and we must allow development. But allowing Mr. Connell to develop these cut and fill lots is a disservice to the honest homeowners who will ultimately bear the cost of maintaining stable ground under their homes.

And please remember, too, that once built this open space will be gone, not just for this generation, but for generations to come. There's a huge value for open space with an existing trail system right next to a large school and multiple neighborhood users. More importantly, there are costs, very real costs, to the people that would buy these homes from Mr. Connell. And speaking as an owner of some very fancy retaining walls, I can tell you that gravity never sleeps, and neither should the City's comprehensive plan and the Foothills ordinance. Thank you.

**Madam Chair Stevens:** Thank you Mr. Meyer. Hobart Swan, Eric Willadsen, and then Steven Stuebner.

**Hobart Swan:** Hi, my name's Hobart Swan, I live at 2623 North 31st Street. I guess I just want to say that it seems like what we're learning in terms of climate change is that just because we've allowed things to happen in the past, we just cannot allow them to happen that way in the future. And I sat here tonight and listened to all the legal arguments about why this project should go forward. But I'm sure you can find equally legal arguments for why we should continue to pollute rivers, why we should continue to fill the sky with CO<sub>2</sub>. And the fact is that at some point we just have to stop and say, is this really in the best interest of us as a society?

And I understand that people – the landowner has certain rights, and if they are not able to build on their land, then they should be compensated in some way. But I think the argument that just because we decided a long time ago that the Foothills should be built up doesn't mean that today, knowing what we know, we should not understand the change of our values the way now we understand what the open spaces are worth. So, I would just say, we need to look ahead, we need to think, are our generations to come going to have a Foothill to go walk in? Or are they going to be walking down streets and developments that used to be Foothills? So, I just encourage you to deny this request and let us keep our Foothills the way they are. Thank you.

**Madam Chair Stevens:** Thank you. Eric Willadsen, followed by Steve Stuebner and Ben Pullman.

**Eric Willadsen (Veterans Park Neighborhood Association):** Eric Willadsen, 4906 Wymosa Street. I'm also representing the Veterans Park Neighborhood Association tonight. Obviously, Veterans Park Neighborhood Association doesn't believe that the proposed development is in line with the guidance set forth in Blueprint Boise or with other development ordinances in place. And the historical documentation is also very clear, the space is unbuildable, and it's been confirmed twice.

With that said, I'm not going to dive into any technical expertise, because I'm not an expert in those things. I do want to add in an acknowledgement of the qualitative loss that the community is facing by this proposed development. I know several people have had long standing and deep connections to this open space through experiences they have had. Couples who have met walking their dogs and wound up getting married, fathers who discovered a love for the outdoors when their four-year-old son demanded to keep going up the hill until they were on top of the mountain. Personally, my wife and I have had an annual wildflower picnic for the past five years. Each time, we talk enthusiastically about bringing the rest of our future family for an annual picnic where we can watch the sunset drape the hills in orange light while listening to the wind rattle in the grasses and the flowers.

If we are to remain whole as a community, it's important for this Commission to recognize and remember what actually builds community and how the guidance granted to Planning and Zoning and Blueprint Boise is specifically designed to entrust you to uphold these ideals that make Boise what it is. Again, thank you for your time and for your diligence in this matter.

**Madam Chair Stevens:** Thank you. Steve Stuebner followed by Ben Coleman and Bran Garcia. Maybe it's Brian.

**Steve Stuebner:** Good evening Madam Chair and Commission. My name is Steve Stuebner and I live at 3209 North 39th Street in the Collister neighborhood 83703. So, I'm here to testify against this proposal and I'm encouraged to hear that the city staff is also recommending denial. In my opinion, the best and highest use of this land is open space and recreation. The landowner should be selling this land to the City of Boise for open space and recreation.

I think this proposal is a complete disaster. Open space and recreation are a big priority for this community. A quick history lesson, we passed by 60% vote back in 2001 the first 10 million open space measure for the city of Boise. And we used those dollars to purchase an important piece of land in the Hillside to Hollow complex, which is directly adjacent to this property in question.

I was involved in that original group, Hillside to the Hollow. We were just a bunch of neighbors that lived in the area, and we all felt like, geez, this is a beautiful piece of Foothills right here immediately adjacent to town. And the City was not interested in buying it at the time. We really had to do a major lobbying effort to get the City interested in this property. And what happened first is a land trust for the Treasure Valley preserved Harrison Hollow.

And then that led to the purchase of the open space and trails in Hillside to the Hollow. And this next piece needs to be preserved. These landowners have been going around trying to find access to this land. They tried to get access through Hillside Junior High, and they were denied. This piece of property is landlocked. I don't even understand why this is being proposed tonight.

There are so many negatives on this proposal that I can't even believe it made it down the pipeline this far. I mean, this cut and fill plan is just ridiculous. We're talking 50,000 dump truck loads of dirt that they are going to cut off in these Foothills to make this development possible. Again, I just think it's a disaster, and the best use of this land is for open space and recreation. Thank you.

**Madam Chair Stevens:** Ben Coleman followed by Bran, or maybe it's Brian, Garcia and then Hollie Conde. Did we lose Ben? We must have lost Ben, okay. Brian, Bran, Garcia, sorry, and then Hollie Conde followed by Ben Helton.

**Brian Garcia:** It's Brian Garcia.

**Madam Chair Stevens:** If you could just pull that down a little bit.

**Brian Garcia:** Sure.

**Madam Chair Stevens:** Thanks.

**Brian Garcia:** I live on 2028 West Falcon Point Court. So, Madam Chair and Commissioners, thanks for the chance to weigh in. Like everyone else, just about, I urge you to vote no or don't approve. And really, I think the points that I want to make have already been made by pretty much everyone else in the aggregate.

I'm looking or I'm asking, I'm urging for consistency. If something was deemed unbuildable before, it's unbuildable now. If something was deemed open space or not before, let it be deemed that now. If something was a fire hazard or too difficult to support infrastructure-wise, what's changed, right? So, I ask for consistency in some of the decisions that have been made on this particular issue over the years, and that we continue to follow those patterns going forward. There's value there.

And the other thing is, I'm relatively new to the community. I've only owned my home for about 10 months now. It's in a great part of the neighborhood. Why would we trade such a gem of a space in Boise, which is so gorgeously unique as it is, for potential headaches related to construction, a few more roofs, and a lot more scarring on the land, right? And I think those are important considerations, and I hope you'll see it that way long-term for us and for the city, thanks.

**Madam Chair Stevens:** Thank you. Hollie Conde followed by Ben Helton, I think, and Scott Mitchell.

**Hollie Conde:** Good evening everyone. My name is Hollie Conde. I live at 3308 West Edgemoor Road. I'm also here representing the Sunset Neighborhood Association this evening.

My first experience to hear about this particular project was about this time last year when Sunset was having its annual neighborhood meeting. And that happened to be the same evening that the developer hosted an informational session. So, my neighbors attended that informational session and were so impassioned against the project that they showed up for a second neighborhood meeting and came to us and said, you know, we want to get involved, this is important, how can we help fight this?

So, for about the past year I have heard from my neighbors repeatedly, what can we do, how's the progress on this, what's happening? I won't go into all of the reasons that we've heard tonight about why this is not a good project. You've heard it all, we've all been listening. But I would just like to urge you on behalf of all of my neighbors and our sister neighborhood associations to not go forward with this project. Thank you.

**Madam Chair Stevens:** Thank you. Ben Helton, Scott Mitchell, and Rhianna Touchette, something like that.

**Ben Helton:** Hi, good evening. I just have a couple points to make. My name's Ben Helton, I live at 2231 West Winter Camp. There was a fire in 2015 in the neighborhood, I believe Tim showed some slides from it. So, that fire occurred – it started – I was at my office which is by the fairgrounds, which is about 5.3 miles away. I was able to call my wife, talk to her, drive from my office to my house, 5.3 miles away, and beat the Fire Department by about 15 minutes. So although the applicant does talk about the closest fire station, it takes a lot longer in reality to mobilize than what they mentioned.

Second, the applicant points out all the addresses of all the people that are opposing it, the typical NIMBY issues against developments in their backyards. What they don't point out is that 3,300 individuals signed a petition online opposing the development. These range from citizens all across Boise and it's not just an Eyrie Canyon issue.

It is a City of Boise, it is an Idaho – some of the quotes, or one in particular, said, wow, really thinking about changing my mind about moving to Boise as the city leaders may not value what we value. And I think it's important to understand that this is not just a NIMBY issue, it's a City of Boise issue, and we are not opposed to all development, just this irresponsible development. Thank you for your time, appreciate it, thanks.

**Madam Chair Stevens:** Thank you. Scott Mitchell? Nope, maybe he went home. Rhianna Touchette? I'm sorry if I'm messing it up. Followed by Ray Dupree and Barb who lives on 16th Street.

**Rhianna Touchette:** Rhianna Touchette, 3230 West Scenic Drive, thank you all. And thank you, also, for supplying this beautiful painting behind you with the ridge in question. I really appreciate the imagery, we can really see what we're talking about here, so thank you.

The effects of wildland fire on communities have become more intense, frequent, and far reaching. Increased development in the wildland-urban interface means higher wildfire risk and more suppression needs, costing billions every year. That is a quote from the first page of the Wildland-Urban Interface Wildfire Mitigation Desk Reference Guide. Ridgelines are important to wildland fire. They provide a natural fire break, and in this current location, these hillsides have old growth sage, tall grasses making them prone to rapid rates of spread and high intensity flames.

Like I said, ridgelines create a natural break for fire. When we start damaging and cutting ridgelines, we put our firefighters at risk. Those ridgelines provide that natural break to dig line, lay hose lay, and as you saw, drop retardant. I urge you to think about the future. Wildfire has changed since 1981, and I hope we have too. Thank you.

**Madam Chair Stevens:** Thank you. Ray Dupree followed by Barb on 16th and Hawk (sp?) Stone. No Ray? Ray? Okay.

**Ray Dupree:** My name is Ray Dupree, I live at 1759 West Silver Crest Drive in Boise. Thanks for staying awake, council members. For 20 years, I'd like to remind you that this has been zoned residential. And for 20 years, the owner has allowed public access to this property with no reservations whatsoever. I would like to remind you that for every development north of Hill Road, these same issues have echoed year after year after year, the same opposition to every development.

And I think it's a little hypocritical particularly for people that have bought lots and built in the Foothills to now object for other people to own homes that these people have – the people that live in the Foothills now, and I can tell you they're not privileged. The people that live in the Foothills have sacrificed to buy these properties and build these homes for their families. But now they're giving all these objections so other people can't

have that same possibility. I know you're going to do your due diligence and do the right thing, but I would like to tell you that the people who live in the Foothills now built those homes over the objections of the same things you're hearing now from the people that don't want any other people to build in those areas.

Mr. Connell's name has come out several times. I would like to mention that this developer was raised on a Native American reservation until he was 18 years old. He left the reservation when he was 18 with nothing but the clothes on his back. He's invested through the years through the good times and through the bad times. This is private property, and I know you'll do your due diligence when you either approve or don't approve this development. Thank you.

**Madam Chair Stevens:** Thank you, Mr. Dupree. Barb followed by Hawk Stone and Bronwen Walters.

**Barbara Ertter:** Thank you and good evening. I'm Barbara Ertter, 1613 North 16th Street, and I'm a quasi-retired professional botanist. And I've been giving foothill walks as well as working on wildflower walks and really getting to know the flora here. And I was dismayed when I found out that a corner of what was an intact ecological ridge is being proposed for development.

Plants do not pay attention to property lines. The ecosystem is the whole ecosystem. And to have that developed, I guess we don't use the word taking when it's affecting the public quality, but in this case, yes, it does compromise, it would compromise the integrity of the public open space to allow this development to proceed. Not only because of the visuals and just the whole ambience of being up there, it would be an increased risk of weeds that would be moving. Once you bulldoze this kind of habitat, it doesn't come back into the shrub step.

Right now, what you've got is some particularly good quality shrub step habitat on those slopes which, by the way, often goes with the heavy clays that are not stable. I can just say that from looking at it. This is one of my very favorite spring wildflower walks, including the access through the private land. It's one of the most accessible populations of the Cusick's primrose which, although not on any rare list, is certainly a special plant, locally. And I'd hate to see that challenged.

I also noticed fires move uphill. I mean, that's one reason why having the houses farther up on the slope is problematic as compared to down in the thing. I mean, you're going to have more weeds move in that aren't going to necessarily stay at the property boundary. It's going to just compromise the whole experience of what should be kept as an intact ridge.

And that's what I wanted to point – oh, last few minutes, I've heard a lot of the term interpretation, you know, how do you interpret? It shows that you are not handcuffed to have to follow something in some literal word. We would not have this commission if you did not have some flexibility in how you want to be interpreting all the stuff you're hearing. Thank you.

**Madam Chair Stevens:** Thank you. Hawk Stone, followed by Bronwen and Steve Abrahamson. Oh no, we lost Hawk. Okay, how about Bronwen? And then Steven Abrahamson followed by Monica Hubbard.

**Bronwen Walters:** Hi, I'm Bronwen Walters and thank you for letting me have the opportunity to talk to you all tonight.

**Madam Chair Stevens:** Your address, please.

**Bronwen Walters:** 4816 North Waterfront Way. I have seen this before. I actually grew up in Washington state and I have seen development happen and destroy basically Washington state, California. So, this is also a bigger picture thing, meaning just because it was approved some time ago, does not mean we don't have a responsibility to make sure that's really the right thing to do. One of the things I'm thinking of is just water runoff. Water runoff from these lawns, Roundup, all of the contaminants that people have in their yards and in their households now, will be amplified on a slope with runoff.

So, there's a lot of information that I think needs to be provided in order to make a good decision and a cost analysis. What is the environmental impact? What's the impact to our school systems? I can tell you that we don't have enough teachers right now in the school district. So, when we bring in more families, how are we going to provide educational services?

I think these are really big issues that, when you're looking at approving this kind of thing, we're talking about all of Boise. We're talking about the future. We're talking about our kids. So, I think it's important to really assess, what is the value to Boise of doing this? And what is the cost in terms of taxes? Because I think that's one of the things we're missing. So, thank you.

**Madam Chair Stevens:** Thank you. Steve Abrahamson? So, if the folks who I'm calling could please come up and sit in the front, so we don't have to – it just makes things more efficient. So, the next person is Monica Hubbard followed by Cam Henson and Brad Murray.

**Steve Abrahamson:** Hello, my name is Steve Abrahamson. I live on 3300 West Scenic Drive Boise, Idaho. Thank you for the opportunity to come up here and speak. Coming down here tonight I had no idea that I would be able to come up and speak. I would have probably wore a better shirt and thought of – prepared something for this.

I am very familiar with the Foothills. I've hiked – I'd like to think I've hiked the Foothills as much as anybody. I used to go there every weekend for the first 23 years I lived in Boise, and I calculated, I probably made 1,000 trips up into these hills we're talking about. And in the last four years, since I moved to the Foothills where the access trail is right at my backyard, I've gone over 250 times every year. So, I've got another 1,000 hikes on this extremely steep territory.

I was shocked that they were actually going to put something there. It's really going to be an eyesore for Hillside Junior High. I know they just built the new gymnasium there, but it was kind of deceiving when, I think, the developer said here's a view from Hillside Junior High, oh there's trees there, you can't see it. Clearly, there's really no trees right behind the – I've got pictures. The ridge will be right over the high school. When you're looking through the new gymnasium, you'll be looking at these houses.

Anyone out by the football field that they just put out there – the brand-new football field will be right under these houses. And these houses will also be looking into my backyard. I thought that was a little deceiving. I thought I would bring that up. If you went to Hillside Junior High, you would be looking right straight down – or right up at these houses. It's going to be very much an eyesore. That's all I have. Thank you.

**Madam Chair Stevens:** Thank you. Monica Hubbard. I didn't think I saw her out there. Kam Hanson and then followed by Brad Murray, Emily Squyzer.

**Kam Hanson:** Hi, how are you? Kam Hanson, I live at 4608 Villa Ridge Way. I'm not going to go into everything that I had written down here of what I submitted to you guys. Just some points of clarification from some of the testimony.

So, I live on Villa Ridge Way. I'm three houses down from where the proposed development is going to go. So, I've got a vested interest there. My first concern is of safety. I've been pretty impressed – I'm not a lawyer but I've been impressed by the definitions that are being thrown around. The dead end doesn't start where this development starts. When you go by Hillside Junior High, there's a big yellow sign that says, "Dead End." That's where the dead end starts, okay? There's only one access and that is 36th Street, and all the other cars are going to get bogged up in there. I was living there when that fire happened, so I know what's going to happen up there. And the fire, by the way, was started by the developer. So, it's not a question of if, it's a question of when. So, for me, it's safety. This is the biggest investment I'm ever going to make in my life, and my family is involved in this. So, I'm very passionate about this, and I think that that needs to be taken into consideration.

So, the first one was the safety. And then the second one is on irresponsible previous developments. And I'm not an engineer either, but I'd like to make some clarifications. I think the words were hearsay on slope shifting. The four houses across the street from me, all are undergoing very major renovations because of that. So, it's not hearsay. It's not conjecture. It's happening. I hope those guys stand up and tell you how –

**Madam Chair Stevens:** If you could please direct your comments to us.

**Kam Hanson:** Okay, I will. Sorry. And also, not being a geologist, you guys can all see me – I'm not 18 feet tall, I'm 5'8" with my shoes on. If I were 18 feet tall – well, let me put it this way. If Colin's holes were 18 feet deep, then I would be 20 feet tall because I could go into those holes that he dug for the soil samples and I could look out of them. So, I followed him up there while he was doing the digging, so I can't believe that we're actually going to be utilizing the soil samples that he is providing for you when he's been fined within the last year \$68,000 by the EPA for his previous development.

The unbuildable lot – bottom line, again, it's unbuildable. By definition, it's unbuildable. It's like saying that – well, even if something is labeled "unflammable" it doesn't mean it's going to burn. Well, it's unbuildable. It's been deemed that way. I know this has been hashed over, but I really think that that needs to be first and foremost. We can't redefine these things after the fact just because one person wants to make a profit for it. So anyway, that's it. Thank you.

**Madam Chair Stevens:** Thank you. Brad Murray? No? Emily Squyzer followed by [Maite 02:44:33] Brian or Diane, Alex Jones.

**Emily Squyzer:** Hello, my name's Emily Squyzer. I live at 3392 North Ussery Street. I represent just a common citizen. I'm a mom. I taught my three-year-old to fly a kite on that ridge six months ago or less on a beautiful spring day. And I'm also a runner on the path. I've done more than 1600 miles on that path. And one thing that I don't think our council knows is that she specifically stated at about 6:30 tonight that the development proposed is not a flooding or erosion hazard. And probably she's never been on the trail because she doesn't know that the Ridge to Rivers and the Land Trust of Treasure Valley closed some of the trails in the proposed development because they wanted to reduce existing erosion.

Those trails are closed to me at 5-foot-tall and 130 pounds. They are closed to my 50-pound dog. They are closed to my 30 pound three-year-old. They should definitely be closed to the movement of 510,000 cubic yards of earth moving, which by the way, the dirt in this area for one cubic yard probably weighs 3,000 pounds. So, I propose that this land

proposal be shot down because they have not done the research to figure out the erosion risk. They haven't walked the path to see that you can't even walk it in a rainstorm without it being high risk. Thank you.

**Madam Chair Stevens:** Thank you. Maite? Diane? No? Alex Jones followed by Jeanie on Lancaster Drive. No? Okay, no Alex. Somebody on Lancaster? No? Okay, Mary Ann Helton followed by Katie Nelson and Emily Boerner.

**Mary Ann Helton:** Hello, good evening. I'm Mary Ann Helton. I live at 2231 West Winter Camp. I would like to say – so I'm a sixth generation Idahoan, and when my husband and I in 2014 decided to buy the house up on Winter Camp, I was a little worried about living in the Foothills just because of a long generation of living in Boise, I know about what happens. We did not build our house, it was the only house really on the market under \$400,000, so we purchased that property.

But one of the things we did in the due diligence of buying that property was we called Colin, and I actually had a conversation with him and asked him what the intent behind us – there's a big hill – so I asked what his plan was. And he specifically told me he was not going to develop that hill because it was far too steep. His own words. So, the intent from his own mouth was that he was never going to develop that hill because of the slope.

Second off, I'm not trying to be a "not in my backyard" or a homeowner that doesn't want other surrounding areas, but there is a huge risk with the erosion that's happening in the neighborhood, which you'll hear some more folks tonight talking about the houses that are having to be re-pillared, as well as the fire risk. My husband already spoke, but I was at our house when the fire was happening, and he did get to the house before the fire department. And also, there's supposed to be another access into our neighborhood off of Cartwright in case of an emergency of a fire. That was never opened, so the fire department couldn't even get through that road.

So, there's a lot of risk in regards to the erosion that's happening up there. Also, the fire plan. And just specifically, I know it doesn't – I'm just one homeowner so it doesn't matter, but I was told from Colin that his intention for the hill behind me was to keep as unbuildable and he had no intention of building that. My husband and I – my husband does landscaping and he just did a retaining wall in our backyard and the City actually made us sign an affidavit that we would take the responsibility and the liability if anything were to happen to that. And I just want to have on record that if that development does go above us and we start to have a lot of water, like our other neighbors who are downhill, that the City is aware of the liability, I guess, that we're presented with.

And like I said before, we were looking for a house under \$400,000 and I know my neighbors have spent upwards of 150 re-pillaring their house. That's a huge cost to ask people to pay and a liability that you're now aware of that people are having to pay to purchase a home in the Foothills, so – or not in the Foothills but in this development and the proposed area. So that's all. Thanks.

**Madam Chair Stevens:** Thank you. Katie Nelson followed by Emily Boerner and Jimmy Hallyburton.

**Katie Nelson:** Hi, I'm Katie Nelson. I live at 4505 North Villa Ridge Way. I didn't really prepare much because I already wrote a letter, but we bought our house in 2012, it was brand new. It was already built. It was a spec home. It passed inspections and as a consumer, I just trusted that the engineers, the developer, and the City were protecting me when I bought my home. I assumed that it was proper – the development was properly graded and compacted, and my home was built safely and solidly.

Five years later, more or less, we started to notice weird things like our doors didn't close very well, our windows stuck, we had cracks in the drywall here and there, little drywall nails poking out. It took about two years of investigating with our own structural engineer and our own geotechnical engineer and our own contractors coming in to find out that our house had sunk at least six inches in one direction with the potential to sink at least 10 more. And that is in our – that's under our whole house, so our house sunk in one direction just based on the drainage. If the drainage direction were to change, our house would be anticipated to sink in that direction as well.

We are estimating that we will end up spending \$130,000 to save our house. We had to do helical piers all the way around the foundation. It tore up our entire landscaping. We had a moat around our house for about three weeks, which my three-year-old and five-year-old son's thoughts was pretty neat, but I was less amused.

They destroyed all the landscaping during the time period, partly because the grass isn't attached to anything because the sod was laid on clay, which is what is in the Foothills. So we're 105 in with the structural repair. We're going to be a whole lot more into it with the landscaping, and then every single room in our house has drywall cracking, has doors that need to be resquared, has paint that needs to be repaired. It's a catastrophic expense for anyone and I wouldn't wish it on anybody. And nobody really can be held accountable. That's on us.

We paid off our student loans. We saved up to buy this house and suddenly we're back at square one with our mortgage. And to be

perfectly honest, I don't trust the developer. I don't trust the engineers. I don't even necessarily trust the City to protect these new home owners would this development happen. And honestly, back in 1981, I was one year old, and I definitely think things have changed in that time period and it should be reassessed. Nobody wants this to happen except the person who will profit from it. Thank you.

**Madam Chair Stevens:** Thank you. Emily Boerner followed by Jimmy Hallyburton.

**Emily Boerner:** Good evening, commissioners. My name is Emily Boerner, I live at 4343 North 36th Street. I'm south of the development, or rather, I'm on 36th Street just north of Hill Road. I have a unique perspective because I've watched this area burn. I have watched it burn to the north and to the east and to the south. In 2008, we had a fire right above Hillside Junior High where one of my children are in school right now. I have another one in Boise High. And then two, one at Cynthia Mann and one at Collister. So we're all over the neighborhood with schools.

So, we watched that one in 2008. I remember that well because I remember nursing my twins and seeing the plume of smoke. And so, we've also seen that in 2015. Kim Henson mentioned the fire up in the neighborhood north of us. That was also pretty frightening. Beyond that, our neighbor to the south also had a fire. So, we've watched this happen and I'm concerned about fire safety. In essence, I think the applicant has one illegal road – I call it illegal because I don't think it should be there – into an elevated highly sloped area. We know what the fire department thinks of this proposal, and we know that fire in the Foothills is a reality.

Fire response. First, there are not four access points as the applicant has suggested. There is one access point. It's kind of like a lollipop that goes into your mouth, that you have to come out the same way. This is a big deal. Considering response from the Fire Station #9, which is where they'd respond from. The trucks have a pretty circuitous route to get up there. It's way beyond the four-minute response time. There are choke points along North Villa Ridge Way and allowing this development to happen would stretch the fire services and leave many of the communities with inadequate service. And by extension, that reduces the quality of service to others in the neighborhoods.

So, again, if the responders can't get to them, how do these people get out of this proposed neighborhood? The proposal simply does not satisfy the need for two ends of a loop to allow safe passage in the event of a fire. The limited access was a problem created by the original owners who split the lot, and it is not the City's problem to fix. The developer is without a viable option to make this neighborhood safe, so it is an island in the sky.

It's isolated, it's inaccessible, and it's very dangerous in consideration of lives and property.

**Madam Chair Stevens:** Thank you, Ms. Boerner. Jimmy Hallyburton.

**Jimmy Hallyburton:** Madam Chairman, commissioners. My name is Jimmy Hallyburton, 3025 North Crane Creek Road. That's not in the neighborhood but it is close to the Foothills. Typically, I'm at meetings like this, the City, ACHD, talking about public safety when it comes to transportation. And today I'm doing that as well, talking about public safety and the roadways in this proposal. I find it really difficult to question our fire department in determining what is safe and what's unsafe and what's acceptable and unacceptable.

I think we have a proposed streetscape that poses a risk to the people in the neighborhood, to our city fire department, and to our wildland firefighters as well. And I've been both of those and I've been on fires in the Boise Foothills and long roads with dead ends makes a threat to turning around. I also serve on transportation committees for the City of Boise, ACHD, and ITB, and I don't think you could find a single person any of those committees that would not call these dead-end roads.

We know that the climate is getting warmer. We know that the Foothills are getting drier. We know that even this weekend our Warm Springs Mesa neighborhood is hosting a fire wise conference to teach people about the growing risk of wildfire and urban interface. And I think that we have a clear example here of a risk that would be posed to both the public and our firefighters as well.

Outside of public safety and the roadways, I think we have to look at Blueprint Boise and decide whether or not this fits into it. And I know that it's a comprehensive plan that doesn't always have teeth, but perhaps Commissioner Gillespie even found a way for us to give that teeth here tonight as well. I also think that we have to look at [inaudible 02:57:25] of hilltop removal and evaluate does that override an R-1A zoning. We have to look at the amount of infill, the amount of hilltop removal, and see if that actually classifies as a "kept to a minimum" standard.

I think that for these reasons and the obvious risk to public safety, that the application should be denied. Thank you.

**Madam Chair Stevens:** Thank you. That is the end of the sign-up sheet, but there are a lot of people sitting there tonight who have not spoken. So can I see a show of hands, if I could, of who still plans to talk tonight? Okay. If you could please all come forward and sit in these first couple of rows. And we just need you, before you leave, there's going to be a pad of white paper on the podium there, and we're just going to need you to

fill one of those out and hand it in to staff or somebody up here before you leave tonight. Don't be shy, I'm going to need one of you to go first.

**Patricia Raino:** Sure. My name's Patricia Raino. I live at 4905 West Outlook Avenue. In 1970, I was part of a study for the Corps of Engineers to see if a big dam should be put up above Hillside Junior High School. And part of it was a concern for the flow of water that might come down that gulch.

Fast forward, we're at 2019. There weren't any houses behind Hillside Junior High School at that time. The more houses we put there, the more the flood danger for the people living below Hillside is exacerbated. And I think we really need to think about it. We are a desert and so we have flash floods. We haven't had one there, but we've put a lot of houses there, and at some point, we may face our junior high school being flooded or our students being put at risk. Thank you.

**Madam Chair Stevens:** Thank you. Oh, don't forget the white sheet. Otherwise you will not be part of the record. Next.

**Matt Ciranni:** Hello, thank you. I'm Matt Ciranni of 3617 Burke Avenue. And that is not – the Foothills are not in my backyard. I live a couple of miles away from a proposed area. Now, the developer talked a lot about fairness. He said something along the lines of if you deny the proposition, it would be unfair or whatever. My thing is if you want to be fair, you'll hold this developer to the same standards as all of the Foothills developments. He should fall under Foothills ordinance because that is what's fair. Why should Planning and Zoning make special exemptions for this developer?

When we talk about fairness, all we really ask is that he be held to the same standards as all of the Foothills developments. The Foothills ordinance should apply – you've heard 100 reasons why this is a bad idea. From the amount of cut and fill to the sustainability. From the slopes, from the loss of open space. These are all very valid reasons to deny the project, but really the main reason it should be denied, he should be held to the same standards as all other Foothills developments. He should not be exempt.

There's 1,000 reasons why this project should be denied. I really think you'd be doing the right thing. You'd be doing a service to the community, Boise, to the legacy. I could go on, but to deny the project – that's all I have to say. Thank you.

**Madam Chair Stevens:** Thank you. Don't forget the white sheet. Great.

**Wes Rinker:** I'm Wes Rinker. I'm at 4729 North Villa Ridge Way. Thank you for the opportunity to speak. My wife and I purchased our home in 2009. And when we looked at purchasing our home, we noticed there were already existing cracks in the foundation, so we of course did due

diligence and hired a city engineer to come look at our home. And he came out and said, "Yeah, this seems like typical movement." We're like, "Great." He's like, "But I won't sign my name to it."

So we ended up purchasing the home hoping that it was just normal settlement. Fast forward about five years, we've spent well over \$60,000 supporting only half of our basement that had sunk three inches in one corner. When they pushed the piers down in, one pier went 40 feet into the ground just to get the pressure that the company required, and the engineers required. Forty feet in the ground for one pier.

So, to say that due diligence was done when the developer cut the land and when the engineers checked compaction, all that stuff, I don't trust any of it. And to know that these houses are going to be put on soil that's 70 feet deep compacted, I just don't see how that's going to happen.

And then more recently we added a deck to our home, and we had the foundation cut out. The City engineer came out and took his little magic rod into the bottom of the foundation and went – and almost fell over because there was no support under where the foundation was cut. And he's like, no, you need to dig deeper. So, we had to add 50 extra cubic yards of concrete to support our deck. Not our house, our deck. And so, our backyard could've ended up a swimming pool just from the foundation holes. So that's all. Thank you so much.

**Madam Chair Stevens:** Thank you. Be sure to fill out a white slip. Okay, I saw lots more hands than that, so please come forward.

**Pam Dineen:** My name is Pam Dineen and I live at 2272 West Winter Camp Drive. I am a transplant from Texas. We moved out here because my husband assured me that Boise, Idaho was the safest place to live, and second safest place in the United States to live in terms of natural disasters. So, we moved here in 2013 and then in 2015, I retired. Nothing else to do so I look outside a lot. And I saw this fire start at the right-hand side of my yard and zoom across and up this hillside in under four minutes.

Now, I have been in a house fire as a small child and there is nothing more terrifying than watching that wall of flames coming right at you. And as I packed up my dog and my pictures – because I never unpack my hurricane boxes because one never knows when one's going to have to leave. As I'm getting ready to go down the hill, I was turned around by the fire department. Do you know what they told me? Shelter in place because the fire trucks couldn't get up 36th Street. Had nothing to do with the dead end or anything else.

So I am sitting in my yard watching airplane tankers drop fire retardant on the hillside and people's homes, which, by the way, rots your shingles and your homeowners insurance doesn't cover that either. And when the City

fire department found that the developer was not at fault and did not bear any financial responsibility for the restitution to some of my neighbors' property, I was absolutely appalled.

And y'all, this debate about unbuildable versus unbuildable rewinds the clock back to the late '90s where we had to have the debate about depends on what your meaning of "is" is. So I just ask you to listen to the testimony tonight and take it all as a whole package. And yes, you have a legal responsibility in terms of what the zoning and all this is. But you have a moral responsibility to the folks that live there now and could live there in the future. And I thank y'all, have a good evening.

**Madam Chair Stevens:** Thank you. Don't forget the white sheet. I have to say it every time. I know there were more people.

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Commissioner Gillespie.

**Commissioner Gillespie:** So, I think we have a pile of them forming, but I think certain people have taken their white sheets back.

**Madam Chair Stevens:** Yes. I want to make sure that the white sheets get turned in either to staff or to one of us up here. And you can just walk up, it's okay to interrupt. Not a big deal. I know there were more hands up and I really am trying to expedite this so we can all get some rest tonight. So please don't hold back. Please come forward when there's an open space. Okay, you're next.

**Dorothy Finaldi:** Thank you. My name's Dorothy Finaldi. I live at 3020 Hillway Drive. I'm just going to add a little bit to what she just said about fire and access and egress. I've had a house fire and since I've lived in Hillway for the last 10 years, I've seen four fires in my neighborhood. Luckily, they've all been small except for mine. And this definition of dead-end roads and fire trucks being able to turn around, I will tell you when there's a fire in the Foothills, they don't send a fire truck. They send seven. And the battalion chief and the ambulance and the police, and then the news media shows up, and I didn't have wildland fire at my house.

There's not room on a dead-end street for seven fire trucks and all that equipment and all your neighbors to get out. Just like she said, a lot of times you have to shelter in place. I act as the wildland coordinator for our neighborhood association, but I think if you went out and asked people in Paradise or other major fires what it was like to drive into a wall of flames or have no way out of your neighborhood, they would tell you it's terrifying.

A dead-end road and a little turnaround is great if it's your garbage truck or your mailman, but trying to get fire equipment and stuff up there I think is a really serious thing that needs to be looked at. And I think sometimes what's written on paper is not what happens in real life and in practicality. Thank you very much for your time.

**Madam Chair Stevens:** Thank you. Oh, guess what you forgot. Next. Okay, I'm going to close the public hearing if people don't get up.

**Mark Boerner:** Good evening, Madam Chair and commissioners. Mark Boerner. I live on 4343 North 36th Street. We've heard many things tonight. To summarize some of them were the access to the unbuildable lot, which I think was done through a proper planning process some time ago and should be reversed. Additionally, there are stories of soil instability. It seems really unfair to people to have more houses going up above on a lesser slope. Same aspect as a hillside that's already so many problems at the bottom.

I want to address the fire thing, and many people have talked about this, but I have a personal experience in the sense that my wife Emily mentioned watching the fire race across our hillside across from us. That happened incredibly quickly, and with the wind the embers were going on all night and long and potentially available to start new fires the next day.

There was also that fire that raced up the hill from Mr. Connell's own crew to the backs of the houses on Arrow Crest Way. But the Oregon Trail fire happened in 2008, and I had a patient that burned to death in that fire. And it really was a very similar setting as to the Arrow Crest area and what this hill would be like because fire always goes to the top. That fire started from some power lines along Amity Road there, and that distance was a longer distance to get to the top of the Oregon Trail area than this was.

It happened so quickly that my patient's husband was watching TV with her. He smelled the fire, he ran out front. He saw there was nothing he could do about it. He tried to run back to his wife and that fast the fire tore through and he basically watched her die. She was a BSU professor, well loved by everybody.

I think the hilltop is a setting that doesn't always follow all these fire codes but given the length of these runs I think it's really a problem because if a problem were to rise up from below, there's really nowhere to run. There's nowhere to go. And you can try to address the fire with retardant drops, but with the chance of getting crews up there, it's not going to happen. In the Oregon Trail fire, they actually called in crews as far away as Kuna to stop it.

Last thought on that one is that that was a unique situation because they could still reach the top of Columbia Village and try to stop the fire from reaching the houses behind it. If that wasn't the case, it could've spread all across Columbia Village.

And I think with the little time I've got left here, just a sense of fair play. The developer did make assurances to people below that houses would not be built above them. I was there at that meeting in the fall of last year and he said to this woman who spoke earlier, "Lady, things change." I just think it's wrong. And lastly, is that at a state court level, the developer signed an affidavit saying that he was an uninterested party in the Bedard parcel. And he was asked to do that because he was going to say that there was no access across the golf course. And I guess the last thing with that was –

**Madam Chair Stevens:** Sir, I'm sorry, that's it. Thank you. Oh, don't forget the white sheet, Dr. Warner.

**John Gonlup:** So, my name is John Gonlup. I live at 4720 North Arrow Villa Way, Boise. My house was the one directly under the airplane dropping the load of fuel. So, I'm going to take the first part of mine to continue Mark. I was at the superior court or this hearing where they referenced that affidavit that Colin had no interest in developing that. And like I said, I was at the meeting. I was also at the 2008, 2009, 2013 meetings with the City Council – or Planning and Zoning, and it was very clear that their intent was that was an unbuildable lot. So we can let the lawyers work out the details on that.

Also want to touch base on something Emily said. There aren't four accesses there. There's one, 36 is the choke point. And the lollipop was funny, but it was very true. What people forget about that fire, it was about a 100-degree day, it was howling wind, and it was a circular saw and a metal pipe with no real fire suppression available other than the fire departments. Let it burn. So that's one.

The thing that I came up here mostly to speak about was the photographs of what is going to be considered visible. Those were a joke. You can see this ridge clear as day from Nampa, Caldwell, Owyhee County. Any shot of a Boise State game where they're showing the beautiful panoramic – that's what's going to get hacked. The lady that spoke and said, "There's a perfect example. There's a piece of art in City Hall, and that's the ridge that's going to get chopped."

I also think – I'd like to reiterate something Emily Boerner said. The property owners and the developers created this issue. It's not up to you to fix it. They shouldn't have created it in the first place. That's what the Supreme

Court voted. And last, I'll leave it at this. Cody, Ron, Jason thank you for your time. I literally have hundreds of emails with these three gentlemen.

And I'll just end with this. After the EPA fined Colin, there was a quote of his in the Idaho Statesman that says, "I'll live to fight another day." I would ask you folks to work with developers that seek to follow the rules, develop in a responsible manner, and don't live to fight another day. Nobody here wants to fight. I know Cody doesn't. I know Ron doesn't. They've dealt with me more than they want to and it's often as a result of my emails or resident emails result in corrective action being taken against this developer. It's not a bunch of NIMBYs complaining. It's because there's cause. If we were just griping, the City wouldn't take action against him. And that's looking backwards. Thank you.

**Madam Chair Stevens:** Thank you. All right, anybody else? If anybody else wants to come up, I'm really going to ask you to please come forward and get in the front row because we're getting close to the end of this. Thank you.

**Eric Selekof:** Good evening. Thank you for hearing my testimony. My name is Eric Selekof. I live at 4502 Castlebar Drive in Boise, Idaho. I have just a quick statistic for you. Taking the numbers that were given earlier of 513 cubic yards approximately being moved for cut, I want to give you a visual of what that might look like. So, imagine your Boise State football stadium, the entire playing surface, plus the end zones. That's the area that we're going to cover with dirt. And the area covered of dirt would stack 240 feet tall for the amount of dirt moved. That was it. Just that easy visual for you.

**Madam Chair Stevens:** Thank you. And you're going to need to fill out a white slip. Yep. Thank you. Okay, last chance. Anyone? I thank you all for coming. It's time for rebuttal from the applicant. Five minutes on the clock, please.

**Rebuttal:**

**DeborahDeborah Nelson (Attorney):** Thank you, commissioners. First on access, lot 19 is designated as buildable. Under the Boise City Code, a buildable lot means eligible for a building permit. We are not seeking a building permit. Under the Boise City Code, the definition of building says, "Any structure with substantial walls and a roof." That's not what we're doing here.

As for the CUP condition, Mr. Breuer said this wasn't about preventing access to the west. What else would a road in this location be used for? Testimony in that proceeding conflicts Mr. Breuer on this point, including Mr. [inaudible 03:17:03], who we just heard from. His letter in that record said, "The developer has made no secret that he intends to build a road

through this non-buildable area to access a future subdivision on adjacent property that is not part of this application." He then urged the staff to add the new condition.

No CUP modification is required here. The condition itself does not require a modification to build a road. It just requires a publicly noticed approval. There is no basis for saying the CUP for approval require here – there is no CUP application. There was a comment that we cannot subdivide adjacent property with this project application. There is nothing that prohibits this plat to cover adjacent property where you have the permission of the landowner, which we have on file with this application. It simply requires their permission.

In fact, we could dedicate the road without a plat, and it could be dedicated to ACHD and they have power to accept that. This applicant is not the same applicant as in Eyrie Canyon, so nothing has been waived or agreed to as a matter of law or fact regarding access of this property to a public street. This land owner is not the same land owner, so any takings cause of action for this landowner arises now if you deny access using that condition. So no statute of limitations has yet begun to run on Hillside. There is no limit in the Boise City Code that limits the amount of cut and fill. As you heard tonight, it's comparable to others, including Harris North.

On the Public Works recommendations of denial, Jason said this evening the concerns were several little things, such as not meeting a 2:1 slope or balancing the site. In his memo he said you can address those in the final reports, and included them as conditions of approval, which we agreed to expressly in our letter on September 9th. He did not ask for resubmittal of the preliminary report, which we could've done.

So, we have complied with everything he asked us to comply with. On Appendix A, I think there's maybe just a semantics in the way we're describing the questions because we didn't agree with Jason's response, but maybe we're describing this in different ways. To be clear, these levels that are listed in this are just one. They're just the fill. And we showed the example of Harris North that illustrates that. We also have examples from our engineers. They worked on the Eyrie Canyon, so they know that's the case. So that contradicts what Jason said.

So, in other words, to compare apples to apples, you've got to look at our 500,000 number against these numbers. If you look at the 1 million, then you need to double those.

On fire, the Boise Fire Department letter says, "Due to site specific conditions, Boise Fire Department cannot recommend approval." They have not identified anything about the specific site conditions of this

property that creates new fire risk. Nothing that differentiates this property from any other Foothills property where they have allowed single access drives to serve 30 or so homes with sprinklers.

There are only 4 pages out of the 500, Commissioner Gillespie, that are relevant to this. They're all in Appendix D about fire apparatus roads, the closest fire station response to emergencies regardless of the assigned station. There are four emergency access points in this area, including two to Cartwright Road. There are also two on 36th.

There was mention of the tax appeal that said that this was not developable because it's too steep. That's incorrect. The tax appeal talked about development as of January 1, 2019, that it wasn't developable because it wasn't subdivided and there was no physical access to the property yet. In other words, the value should not be done – it shouldn't be valued as developed property because it's not developed yet.

The statement about the “no hazards due to erosion risk” is a quote from Public Works. The age of zoning is irrelevant. For the benefit of landowners everywhere in the city, not just in the Foothills, we trust that the City is going to observe their legal entitlements. Thank you.

**Madam Chair Stevens:** Thank you. With that we'll go ahead and close the public portion of the hearing. So, we have two applications in front of us for CFH and SUB. What does the commission want to do?

**Motions:**

**Commissioner Bratnober:** Madam Chair?

**Madam Chair Stevens:** Where did I hear that from? Commissioner Bratnober.

**Commissioner Bratnober:** I move we deny CFH19-00055 and SUB19-00034 as described.

**Madam Chair Stevens:** Is there a second?

**Student Commissioner Zuckerman:** Second.

**Madam Chair Stevens:** Okay. We have a motion by Commissioner Bratnober, second by Commissioner Zuckerman discussion. Commissioner Bratnober.

**Commissioner Bratnober:** Thank you very much. So, there are a couple of things here that stand out. And the biggest one is the fire danger. When you look at the choke point, not necessarily the access point at 36th, that seems to be a huge problem. Second, the Lot 19 was designated

unbuildable. And now, we're talking about putting a road on it, which does not seem to be well advised.

One of my big concerns is the soil quality that we don't know about because, obviously, more work has to be done of the site itself. But also, the effect on some of the folks who are living down below. We already have problems that I don't believe we thoroughly understand at this point.

Why are we entertaining some more there? Then finally, there do seem to be some gaps in the application that at a minimum, it should be a complete document before it comes to us. Thank you.

**Madam Chair Stevens:** Is there further discussion?

**Commissioner Gillespie:** Madam Chairman.

**Madam Chair Stevens:** Mr. Gillespie.

**Commissioner Gillespie:** So, I'll also be voting in favor of Commissioner Bratnober's motion just a couple of very quick things. First of all, I agree with the staff report. And I think Commissioner Bratnober also agrees with the findings and conclusions in the staff report. With one, I suppose, notable exception at this point. I do accept the applicant's argument that the plain letter of the code would exclude complies with the comprehensive plan decision criteria for either subdivisions or CFHs.

So, the parts of the staff report that reference the comp plan, I'm not in agreement with those. I do, however, accept the City's interpretation of Lot 19 and what that means for access and what the plat restrictions on that plat mean. And I accept their conclusion with that respect in the staff report. I also accept the City's interpretation of what the fire department's note means. And I would agree with the finding in the staff report that this proposal presents an adverse fire risk, which is one of the CFH criteria.

In terms of what the applicant can do to cure the application, which we are sort of required to find, I think, first of all, if they could resolve the access issues, either in court or through a CUP modification or through some process, that would get us halfway or a third of the way there. Also, if they could work to perhaps reduce the size of the footprint of this along the ridges concentrate the development down in the valleys, which is what the plan and the code calls for. That would also make me more supportive of the development. So, thank you very much.

**Madam Chair Stevens:** Is there further discussion?

**Commissioner Finfrock:** Madam Chair?

**Madam Chair Stevens:** Commissioner Finfrock.

**Commissioner Finfrock:** I think, Boise City code 11-7-8.5 minimizes disturbances and grading. And I do think when you have 80 feet of cut and 70 feet of fill necessary, that it does create an issue with the Boise City Code 11-7-8.5.

That being said, I do think the preliminary report did what it needed to – or said what it needed to say. It sounds like when he went in and he only took the 18-foot sample, that is actually consistent with what has been done in the past. And I understand that. But I question whether they – when we require for the project to actually provide satisfactory demonstrations that the conditions can be mitigated. I'm not sure if that did it.

Beyond that, I sit here, and I question is, okay, so 18 feet out of 80 is enough, what are our standards? What exactly – he should have gone a little bit further to mitigate that and tell us what exactly – how the soil impact will affect this build and everything. And I'm not sure. I sit here confused about that process and exactly, if he did go the step, he needed to actually provide that information to us. I will be also voting against this.

**Madam Chair Stevens:** Okay. Any further comments from the Commission?

**Commissioner Bratnober:** Madam Chair?

**Madam Chair Stevens:** Commissioner Bratnober.

**Commissioner Bratnober:** I've been advised I should add to the motion deny per the staff report. Thank you.

**Madam Chair Stevens:** Okay. And does the second concur, Mr. Zuckerman?

**Student Commissioner Zuckerman:** I second the amendment.

**Madam Chair Stevens:** Okay. Is there further discussion?

**James Smith (Legal):** Madam Chair, just a clarification to Commissioner Bratnober's point, the advice is if that is the intent of the motion that that's the way it should be stated, if that's incorporating staff report findings, and the motion should be stated that way, just so the record is clear. Thank you.

**Madam Chair Stevens:** Thank you. And that was legal for the record. I had to find you for a second. Are there other comments?

**Commissioner Schafer:** Madam Chair.

**Madam Chair Stevens:** Commissioner Schafer.

**Commissioner Schafer:** Sorry. I'm in favor of the motion. I'm going to piggyback on in particular what Commissioner Gillespie noted. At the end, fire remains a big concern for me and access into the property. And ultimately, there's just enough questions here and there and throughout the application to piggyback on what some of the Commissioners have said, too, that it's probably pretty close. But there's just enough questions for me that leads me to support the motion.

I do want to point out, however, though, that is a piece of private property. And I certainly appreciate everybody's concern over the fact that they've had access, the public's had access to this piece of property for years now. But I think we all need to be mindful that they do have rights to develop this property.

And maybe this application isn't quite the right way to go about it. But ultimately, this private property, and there's probably going to be some sort of development there in the future, unless things change from the City's perspective, right? And it becomes public property at that point. So, just kind of a reminder in that regard for everyone.

**Commissioner Stead:** Madam Chair, Commissioner Stead. I'm looking at Chapter 11-07 of the development and design standards for Hillside Development. And I would love to see some effort to incorporate or preserve some of the existing geology, cliffs on the proposed site items 1 through 12, basically outline the standards of Hillside Development and keeping within the existing. Let's see, the existing topography, geology, vegetation.

And additionally, I don't agree – I agree with what my commissioners have said on the fire access, whether it's defined as a dead end or not is not something that I would want to argue with the fire chief. If he says that's unsafe, then that's something we should respect and figure out how to work with the fire department. And so, that we are keeping, building safe access for firefighters and our citizens.

**Madam Chair Stevens:** I'm going to say a couple of final things, maybe unless Commissioner Ansoategui is going to weigh in at some point. So, I just want to – I'm going to be supporting the motion. And I just want to point to a couple of specific things that Commissioner Stead just went through. She said 1 through 12. But I think it's important to get on to the record a couple of these, and to listen to the language that use the word "shall" throughout the code. This is the code not the comp plan. But I think it's important to keep those two things together. And I'll get to that in just a minute.

So, number two development shall be oriented on the site so that grading and other site preparations are kept to a minimum. Number 3A, shaping, shall blend in with existing topography to minimize the necessity of padding or terracing of building sites.

Three B, building pads and terracing shall be graded to blend in to the natural contours. Number six, disruption of existing plant and animal life shall be minimized. Number seven, innovative methods of slope and soil stabilization, grading, and landscaping are encouraged. And then finally, number eight, which has multiple access points and street grades that meet requirements of the fire department and ACHD shall be provided.

And we were told very clearly in no uncertain terms by the fire department tonight that this does not meet those requirements. I also just want to point out that I – we spoke with legal before the hearing in our work session tonight. And I asked specifically about the comp plans and its applicability here.

**James Smith (Legal):** Madam Chair, I'd prefer we not put the legal advice to the Commission on the record. If the commission can lay out its reasons and layout its findings, but the legal advice would prefer not to put on record.

**Madam Chair Stevens:** So, it's my opinion that the comp plan is, in fact, in play here. And it's one of the tools that not only can we use, but we should use. And so, I just want to point out that there are a couple of goals in the Foothills chapter tonight that I think are relevant.

These are Foothills FHCCN 5.3 with regard to terraforming FHCCN 5.5 with regard to hazardous areas and safety, and then Goal FHCCN 6.3 and 6.2 with regard to buildable areas and slope protection areas. So, I wanted to point those out.

And then finally, with regard to what can be done for the application to come forward a second time with a different configuration, I just want to quibble a little bit with Commissioner Schafer about what is – that this is private land. And yes, it is private land. And I don't disagree with that.

But it's a very small parcel of this land that's actually designated buildable per the code that I just read into the record as well as per the Foothills goals and objectives that I just read into the record. So for me, to be able to approve this, we're going to have to see immense changes to the amount of cut and fill.

In other words, minimizing it dramatically. And also, only building on the parts of this parcel that are not in excess of 25 percent slope as well as dealing with the access issues that Commissioner Gillespie pointed out. So, that's where I am. I'm going to be supporting the motion.

Is there anything further? Commissioner Ansotegui, do you want to add something?

**Commissioner Ansotegui:** Yeah. I will be supporting the motion tonight also. And I think the commissioners have done a really great job of covering code. Ultimately, when we look at a subdivision plat proposal, one of the questions we ask is whether or not it's consistent with the purpose of the code, promotes the public health and safety and general welfare of residents. And I think I'm just going to add that in that the code really – this project does not do these things.

Particularly, I think I will mention with the fire. And fire issues in terms of the length of the streets that go out. When we looked at – the length of the streets are so far out. Let me just take a quick look here at this code. When we're looking at the International Fire Code, we're talking about dead end streets and the conditions that for turnarounds, required conditions for turnaround.

And that this is 700 feet – over 750 feet requires special approval. And the length of these stretches of roads at 1440 feet, 2090 feet, and 2230 feet are so far over that that there's no way that we can be assured of the safety of the people who live at the ends of those roads. I'm just going to add that. But I think everybody has pretty much covered this really well.

**Madam Chair Stevens:** Okay. If there's no further discussion, will the clerk call the roll?

**Roll Call:**

**Commissioner Schafer:** Aye.

**Commissioner Stead:** Aye

**Commissioner Bratnober:** Aye.

**Commissioner Ansotegui:** Aye.

**Commissioner Stevens:** Aye.

**Commissioner Finrock:** Aye.

**Commissioner Gillespie:** Aye.

All in favor. Motion carried.

**Madam Chair Stevens:** Thank you everybody for your participation tonight. Meeting adjourned.

**SUB19-00034 / Eyrie Terraces Subdivision**

SUB19-00034 / 2317 W Winter Camp Dr / Preliminary Plat for a residential subdivision comprised of 30 buildable and 4 common lots on approximately 22 acres located in an R-1A (Single Family Residential) zone. Cody Riddle

<b>RESULT:</b>	<b>DENIED [7 TO 0]</b>
<b>MOVER:</b>	Jim Bratnober, Commissioner
<b>SECONDER:</b>	Ben Zuckerman, Student Commissioner
<b>AYES:</b>	Ansotegui, Stevens, Gillespie, Stead, Finfrock, Bratnober, Schafer
<b>ABSTAIN:</b>	Ben Zuckerman

V. ADJOURNMENT